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CIVIL SERVICE JOURNAL

U.S. CIVIL SERVICE COMMISSION
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"A strong career service is one of the greatest strengths of our democratic process"

Gerald R. Ford

CIVIL SERVICE JOURNAL

Volume 15 No. 1 **July-September 1974**

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WORTH NOTING

☐ MANPOWER REDUCTION. President Ford has ordered a reduction of 40,000 Federal jobs from those planned for the current year. Whenever possible, this reduction will be accomplished through attrition, he said. The Director of the Office of Management and Budget will inform affected department and agency heads, by letter, of the specific changes to be made in their employment ceilings for Fiscal Year 1975.

☐ FSEE REPLACED. Civil Service Commission has announced that the Federal Service Entrance Examination (FSEE), which was closed in June, will be replaced in October by a new Professional and Administrative Career Examination (PACE).

About 10,000 appointments are expected to be made annually through the new exam.

PACE will serve as the principal means of entry into the Federal civil service for college graduates and others with appropriate, responsible work experience. PACE, like its predecessor, will be a single examination used to fill a variety of entrance-level positions of a professional, administrative, or technical nature. Specialized civil service examinations covering professional positions in engineering, science, accounting, and some other fields, as well as separate examinations for positions at grades above entry levels, will continue unchanged.

PACE will differ from the examination it replaces in a number of ways. The written test to be used as part of the new examination plan has been redesigned to incorporate major changes in both content and coverage. Based on extensive professional research into abilities needed on the job, the written test will measure a wider range of abilities.

The new 5-part test battery will provide an improved tool for matching candidates with jobs. Eligible candidates will be referred for specific positions according to the relative importance of different measured abilities to successful performance in different job categories, as indicated by test results.

☐ SUPERGRADE PAY studied. The Civil Service Commission announced results of a nationwide executive pay study conducted as part of the Commission's review of the Federal pay comparability process. Objective of the study was to determine current private enterprise salaries for positions equivalent to top Federal career levels.

(Continued—See Inside Back Cover)

ANOTHER STEP: IMPLEMENTATION

By PAUL MAHONEY, Director, Federal Employee Appeals Authority, U.S. Civil Service Commission

AN ADVERSE ACTION and appeals system serves a vital function in maintaining an effective merit system.

There are times—under any system, however well employees and supervisors may be selected and assigned—when disciplinary actions must be taken. Employees disciplined have a clear right to appeal disciplinary decisions they consider to be unfair.

For these cases the Government has long had policies and procedures based on law, rule, and regulation, to protect the rights of employees and allow them to defend themselves against decisions they perceive as improper.

As set forth in detail in the *Journal* for April-June 1973, the Commission has recently completed a thorough, top-to-bottom review of the entire process.

One of the major difficulties with the past system was that a single adverse action case could go through as many as six levels of decision, including two separate hearings, with the record changing along the way.

It is easy to imagine the reception the final decision receives from the appellant and the agency involved when it comes in a year or more later. By that time the parties may barely recognize anything about the case but the names.

The Commission's study shared a number of conclusions with several other separate, independent studies of the system including those made by the General Accounting Office and the Administrative Conference of the United States. All the studies agreed that, as a minimum, a new appeals system must (1) operate with maximum

independence within the Civil Service Commission; (2) meet the requirements of due process; (3) avoid duplication, complexity, and delay; (4) provide a single, closed, and unchanging record to which all can relate; (5) provide fair, just, and equitable decisions; and (6) maintain the trust and confidence of all concerned.

The Commission decided that a revised appeals system that would meet these six requirements could be implemented through the issuance of an Executive order and by administrative action.

Executive Order 11787 issued June 11, 1974, revoked Executive Order 10987, which had required agencies to establish and maintain adverse action appeals systems. At the same time, E.O. 11787 vested in the Commission sole authority to decide adverse action appeals of all employees covered by the Commission's appeals system.

September 9 Starting Date

The Executive order and the Commission's revised regulations implementing the new appeals system apply to all actions effected on or after September 9, 1974.

The major streamlining feature of the new appellate system involves elimination of the agency appeals systems. Under the new system, all appeals from adverse actions under part 752-B of the Civil Service Regulations (5 CFR 752-B) are made directly to the Commission. The new system does, however, provide for agency review prior to the time when a final agency decision on the proposed adverse action is reached.

While the requirement of a 30-day advance written notice and the opportunity for both oral and written replies have remained unaltered in the new system, a change has been made with respect to the agency's final decision to effect the adverse action.

As part of the new system, the final agency decision must be made by an official at a higher level of authority within the agency than the official who actually signed the proposal, except where the advance notice is issued by the head of the agency. (See table 1 for a chart of the revised adverse action and appeals systems.)

The establishment of a single-level appellate system staffed with trained professional appeals officers and the revocation of the mandatory requirement that agencies maintain separate appeals systems will provide employees and agency management with objective, well-written decisions and eliminate or significantly reduce duplication, complexity, and delay. Further, by retaining and improving all the elements of due process required in taking an adverse action, all concerned will be assured of fair, just, equitable, and timely processing of adverse action appeals.

Organization

To administer the revised appeals system, the Commission has established the Federal Employee Appeals Authority (FEAA) as an independent organization within the Commission, which will provide one-level appellate decisions. (See table 2 for an organizational chart of FEAA.) Responsibility for overall management of the Commission's appellate function will be vested in the Director of the Appeals Authority.

The Appeals Authority will be staffed with qualified professional Appeals Officers located at field offices throughout the United States. Appeals Officers will make final appellate decisions for the Commission on cases they decide. Their decisions will exhaust administrative remedies when rendered, permitting an appellant to seek judicial review.

An Appeals Review Board (ARB) has been established to provide further review of appeals decisions within the Commission. (See table 3 for an organization chart of ARB.) However, the Board will reconsider cases only if they meet the limited grounds for such review as set out in the regulations.

The Federal Employee Appeals Authority and the Appeals Review Board will be organizationally independent of the Commission's Regional Directors and/or Executive Director, and each will function directly under the Civil Service Commissioners.

FEAA field offices will be located in the same 10 regional office cities and the District of Columbia where first appellate level Commission decisions were previously made. The Appeals Officers will receive appeals, direct an investigation to be made, provide for and hold hearings, and issue one-level decisions on appeals from Federal employees. The Appeals Officers also will have the authority to instruct agencies to take corrective action when appropriate and to mitigate penalties when the penalty imposed is not in accord with agency policy or practices in similar situations.

The decision of the Appeals Officer will be the final appellate decision of the Commission. That decision will be based on an evidentiary record that will be closed at the conclusion of the hearing, where one is held, or after the parties have been afforded a reasonable time to submit any and all relevant evidence. Any Commission review beyond the decision of the Appeals Officer will be limited to that record, except where the new-evidence criterion for reopening has been met.

FEAA will emphasize openness, both with respect to the parties to an appeal and the general public. In the area of public information, the Commission will publish digests of significant FEAA and ARB decisions, and will make available in Washington, D.C., and at FEAA field offices throughout the country copies of all significant decisions in "depersonalized" form (*i.e.*, with identification of the parties deleted). In addition, copies of decisions will be available in the office that issued them, and all decisions issued by all offices will be available in FEAA headquarters in Washington, D.C.

With respect to the parties, an appellant's hearing, upon request, will be open to the public unless the Appeals Office finds there is valid

basis for honoring an agency objection to an open hearing.

The Appeals Review Board will review decisions issued by the Appeals Officer only in those instances where certain limited criteria have been met. The Board may reopen and reconsider the case when the party requesting reopening submits written argument or evidence which tends to establish that (1) there is new and material evidence not previously available; (2) the previous decision involves an erroneous interpretation of law or regulations, or a misapplication of established policy; or (3) the previous decision is of a precedential nature involving new or unreviewed policy consideration that may have an effect beyond the case at hand.

In addition to their review of requests for reopening, the Appeals Review Board will also have original jurisdiction in retirement cases (except disability retirement), appeals from examination ratings of Administrative Law Judges, complaints about Commission employment practices, and appeals of agency decisions on discrimination complaint appeals.

As in the past, decisions of the Appeals Review Board are subject to review by the Civil Service Commissioners. However, this review will be available only in those instances where the Commissioners believe that the Board's decision will have impact beyond the case at hand. This is a more limited criterion than existed when the Commissioners previously reviewed requests for reopening of decisions issued by the former Board of Appeals and Review.

The new appellate system is based on a philosophy of complete impartiality, objectivity, fairness, and timeliness of appeals decisions. We are confident that the new system will achieve its goals and objectives based on that philosophy, and that the organizational changes and revisions in the appellate process will be positive steps toward improvements that will assure the trust and confidence of all concerned.

Table 1

ADVERSE ACTION AND APPEALS SYSTEM

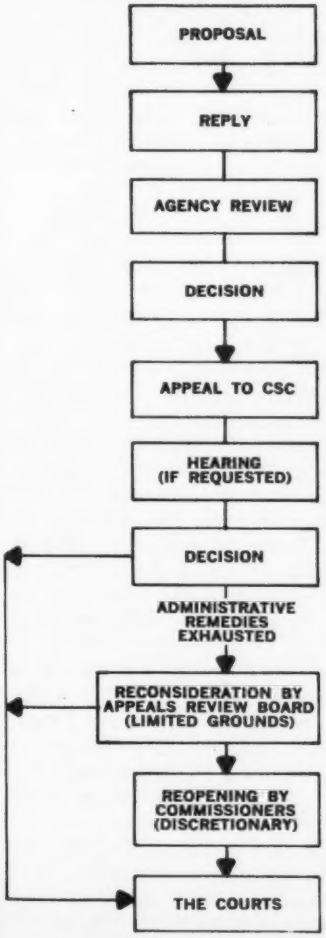


Table 2

ORGANIZATION
Federal Employee Appeals Authority (FEAA)

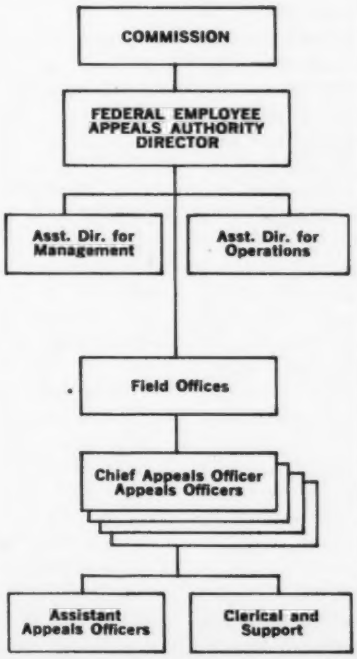
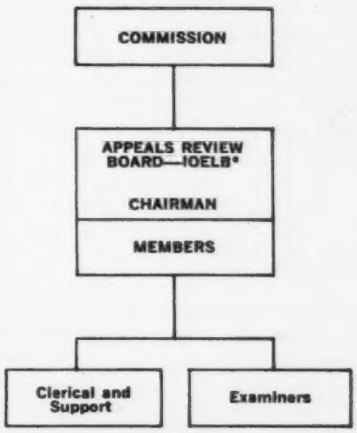


Table 3

ORGANIZATION
Appeals Review Board (ARB)



*International Organizations Employees Loyalty Board

EQUAL OPPORTUNITY EQUAL OPPORTUNITY

In terms of quantity as well as quality, the Government-wide equal employment opportunity counseling and discrimination complaint system is working. Reports show that Federal employees and applicants are making increased use of the system, and a recent onsite study of the EEO counseling program conducted by the Commission indicates that the counseling program is functioning effectively in the field.

Regarding quantity, figures show that in FY 1970, the first year of the program, 12,063 Federal employees and applicants took advantage of the availability of precomplaint counseling. In FY 1971, the number increased to 14,926; in FY 1972, the total grew to 16,883; and in FY 1973, the year that equal opportunity in Federal employment became law as well as policy, 26,627 persons used the EEO counseling system.

Growing confidence in the system can be attributed partly to the fact that counseling *works*—it resulted in corrective action in 47.2 percent of all cases in FY 1973. Only 10 percent of the persons counseled felt it necessary to go on to file formal complaints. Persons counseled either received corrective action or apparently had their questions resolved at the counseling stage to the extent of not requesting further action.

To inquire into the quality of counseling, the Commission's Bureau of Personnel Management Evaluation, in consultation with the Office of Federal Equal Employment Opportunity, designed a special study in 1973. The purposes of the study were: (1) to review the effectiveness of the EEO counseling program on a nationwide basis; (2) to find out how employees viewed the counseling program; (3) to investigate how the EEO counseling program was functioning within Federal installations; and (4) to determine whether employees who consulted EEO counselors were adequately informed regarding their rights to file formal complaints of discrimination.

The study was conducted onsite at a sample of 88 Federal installations across the country by Commission personnel management advisers. The results then were tabulated and summarized in the Commission's central office.

The summary of the study that follows includes research results gathered from two sources: (1) data collected by CSC advisers who investigated the operation of the EEO counseling program at the 88 Federal installations; and (2) advisers' structured interviews with 160 employees who had received counseling but had not filed formal complaints. (Percentages shown in the summary are based in each case on the number of responses to specific questions and not necessarily on the entire sample of installations included in the survey.)

Of the 88 installations sampled, 47 installations were found to have had varying amounts of EEO counseling activity; 35 had established a counseling program but experienced little or no counseling activity during the year preceding the study; and 6 installations that were identified in the study as not carrying out Commission EEO directives were ordered by the Commission to take corrective actions.

Viewpoints About The Counseling Program

Employee views of the counselor. (Note: The following percentages reflect the CSC advisers' summarizations of the views of all employees questioned at each installation.) At 84 percent of the installations, employees expressed confidence in their EEO counselors; at 83 percent, employees viewed counselors as objective; at 96 percent, employees saw counselors as empathetic and understanding of their problems; and at 82 percent of the installations, employees found counselors responsive. When negative viewpoints were expressed, they related to the method of counselor selection, the way the counseling system operated, or to personal traits of particular counselors.

Employee views about the counseling. Some 86 percent of the 160 counseled employees believed the counselor fully discussed their problems, and 75 percent were satisfied with the counseling session. Over half of the employees, however, were not satisfied with the results. Some 57 percent of the counseled employees reported they did not feel the matter they had brought to the counselor was resolved, and 55 percent said that no corrective action resulted from the counseling session. At the time of the interview, however, these employees had not filed a formal complaint, and it

should be noted that corrective action is not always appropriate when the facts developed by the counselor are considered objectively.

Employee views about formal complaints. Some 85 percent of the employees counseled said their right to file a formal complaint was fully explained by the counselor, and 94 percent said their counselors did not attempt to discourage them from filing formal complaints.

Counselor views. (Note: A number of the installations sampled had only one counselor. At those installations with more than one counselor, the CSC adviser summarized the counselors' views to reflect the majority opinion about the question.) At 84 percent of the installations, counselors believed management to be cooperative and fair, and counselors at 76 percent of the installations believed that their efforts contributed to improved management. Counselors at 91 percent of the installations perceived themselves as objective; at the other 9 percent of the installations, however, counselors saw themselves as employee advocates.

Management views. Managers at 85 percent of the installations perceived the counselors as objective, and these managers generally indicated they were responsive to the problems of the counselors. Lack of management responsiveness at the other installations was analyzed by CSC advisers. They attributed it to three possible causes: management's perception of employee bias on the part of the counselor; failure on the part of top management to take a strong position in support of the counseling program and hold lower level supervisors accountable for EEO-related actions; and anxiety and antagonism in the supervisory ranks regarding changes brought about by the equal employment opportunity program.

Facts About Operation Of the Counseling Program

Counselor qualifications. In the judgment of CSC advisers, counselors at 85 percent of the installations were effectively trained and oriented; at 31 percent of the installations, however, EEO counselors were assessed by Commission advisers as insufficiently knowledgeable about the Federal personnel system. At 90 percent of the installations, counselors had received EEO training; at 93 percent, CSC advisers found that counselors had sufficient understanding of their agency's mission and organization; at 88 percent of the installations, counselors said they knew where to refer non-EEO problems.

Counselor accessibility. Ninety percent of the interviewed employees stated they had no difficulty contacting the counselor. At 23 percent of the installations, however, an employee could not arrange for counseling within a reasonable period of time. This difficulty was basically attributed to the counselor's geographic distance from the employee. The number of counselors designated at 87 percent of the installations met or exceeded the Commission's recommendations, i.e., one counselor at each installation with 50 or more employees and/or a ratio of at least one counselor for every 500 employees; 70 percent of the installations had a sufficient number of counselors to assure that counseling service would not be interrupted by vacations or other counselor absences and that a choice of counselors would be available. Program publicity in accordance with CSC guidelines was given at 77 percent of the sites.

Organization of the counseling program. At 96 percent of the installations, counseling programs were operated apart from the personnel office and were staffed by nonsupervisory employees.

Methods of counselor selections. Agencies used various approaches in selecting counselors. Approximately three-fourths of the counselors were appointed informally by management without any input from employees or unions. Other methods of counselor selection included appointment by local management with input from employees or their representatives, election of counselor candidates by employees, and selection on a competitive basis.

Counseling facilities. At 96 percent of the installations, counseling facilities provided privacy and were located in areas where employees felt comfortable discussing their problems.

General Conclusions and Followup

Results of this special study of EEO counseling show that the program is successful in doing what it is intended to do. Most individual EEO-related problems are being resolved informally at grassroots levels, and EEO counselors are well-motivated, competent men and women doing an effective job. At the same time, the study was so structured that it identifies those problem areas which do exist and require attention.

A summary of this study, along with the agenda CSC used in conducting it, have been sent to agency directors of EEO and directors of personnel to inform them regarding the functioning of the Government-wide EEO counseling program. And they were asked to conduct a self-evaluation of their own EEO counseling programs during FY 1975, identifying problem areas, correcting inadequacies, and reporting their findings to the Commission's Office of Federal Equal Employment Opportunity.

The Commission expects this effort to result in overall improvement of the EEO counseling function while it provides agency and CSC program managers with a complete picture of counseling operations for program evaluation purposes. With increased and improved knowledge of how the counseling system is working, the Commission will be in a better position to follow up on specific areas requiring further study and to develop guidance that will make the counseling and complaints system work even more effectively.

—Rene Vawter

A REPORT ON bilateralism IN THE federal SERVICE

Chairman Robert E. Hampton of the U.S. Civil Service Commission appeared as leadoff witness on May 21 and 22, 1974, when the House Subcommittee on Manpower and Civil Service opened hearings on proposals for labor-management legislation for the Federal Government. The thrust of his testimony was that the labor-management Executive Order 11491 program is operating with reasonable success and that there is no demonstrated need for changing to a legislated program. Following are excerpts from his keynote remarks.

THE CLIMATE for labor-management dealings and relationships in the Federal Government has evolved from the first principles on which the existing program is based. These principles are as valid and timely today as they were when the Executive order program was formalized 12 years ago in Executive Order 10988 and modernized with the provision for third-party machinery in 1970 by Executive Order 11491, which has since been amended.

As the essential statutory framework of Federal personnel policy, merit principles provide the context within which collective dealings must operate. And the essential authority of public officials to meet their obligation to manage effectively must be maintained. What the Executive order reserves to Federal managers—commonly referred to as "management rights"—are in reality those responsibilities required of Government to manage in the public interest.

A major strength of our program under Executive order is its ability to make the periodic adjustments necessary to accommodate to new conditions in an orderly and evolutionary process. The twin imperatives of "improved well-being of employees" and "efficient administration of the Government" under Executive Order 11491 have shaped the policy, the procedures, and the direction of the Federal labor relations program.

That we've come a long way as a result is shown by the overall record of accomplishment and benefit.

Unions have grown and stabilized. As of 6 months ago, nearly 1,100,000 employees, or 56 percent of the entire nonpostal Federal work force, had been organized into exclusive bargaining units. That's just about double the proportion in private industry, and it includes very close to the total population of eligible employees in the Federal blue-collar force.

More recently, a dramatic upsurge in negotiating activity has broadened agreement coverage to a very considerable measure. Our studies have shown that over 77 percent of all nonpostal Federal employees in exclusive units are

covered by negotiated agreements, with an additional 17 percent on the verge of initial agreements. This overall total of 94 percent cannot be far out of line with the situation in private industry; and even if we assume agreement coverage there approaches 100 percent, the gap is narrowing all the time.

The collective bargaining process is at the heart of any labor-management program, and the Civil Service Commission in conjunction with the Office of Management and Budget recently undertook to determine just how it is working under Executive Order 11491. To distinguish fact from opinion—and to sharpen our perception of the total picture—we surveyed the bargaining experience throughout Government. The returns are now in on almost nine-tenths of our program's more than 3,400 recorded units, including virtually all of those under negotiated agreements. What emerges is an overall record of bargaining achievements under the Executive order program, notably:

☐ The parties are reaching final agreement in only a few months of negotiations (within 3 to 4 months) in two-thirds or more of the bargaining situations.

☐ More important, they are learning and managing to settle their own problems across the table in their own way, and mostly *on* their own. Only 16 percent of bargaining situations required third-party involvement—and most of them involved only mediation (344 cases). All other third-party involvement (the Federal Labor Relations Council, Federal Service Impasses Panel, and Assistant Secretary of Labor) was confined to just about 80 bargaining situations.

And these agreements incorporate a variety of matters every bit as broad and important as in private industry—with the exception of those areas where Congress has either retained direct control or has established a special statutory mechanism. The matters covered by agreements are amply documented in the Commission's new Labor Agreement Information Retrieval System, which for the first time ever gives us a current, automated handle on what has been negotiated in the Executive order program.

Included in the wide range of negotiated items are provisions that go beyond what's required in regulations, with bilateral (instead of unilateral) grievance procedure, because of their presence in agreements. We find, for example, that:

☐ More than 820,000 Federal employees enjoy access to negotiated grievance procedures—most of them providing final and binding arbitration.

☐ Some 718,000 are covered by negotiated promotion policies.

☐ About 712,000 are subject to negotiated overtime clauses.

☐ Almost 652,000 are under negotiated safety provisions.

☐ Over 589,000 are covered by negotiated disciplinary policies.

These are only a few examples of the very real and tangible accomplishments produced through the collective bargaining process in the Executive order program. And they represent only a part of the total employee benefits package developed on a bilateral basis in the Federal service.

There are other mechanisms providing for union participation in developing wage and fringe levels, which also must be considered in the total picture.

But before going on to them, I would like to review some of the systemic reasons why basic pay and economic supplements aren't deferred to the bargaining table in the Federal sector—reasons that inhere in the nature of our system of Government.

The Federal Setting

The setting for labor-management relations in the Federal service has evolved from the special and unique characteristics of Government as employer—actually, a multiplicity of employers in some 70 departments and agencies employing some 2,000,000 nonpostal civilians. Congressional control over taxation and the budget process, the monopoly character of much of Government's activities and the concomitant necessity for uninterrupted service, expression of the public will in Federal personnel affairs—these are some of the conditions that make us a very special and unique kind of employer, and distinguish us from employers in the private economy. They do tend to limit the scope of bargainable matters—in ways deemed to be vitally necessary in the public interest.

Notwithstanding these essential differences, however, some critics of the Federal labor-management program blindly favor a wholesale transplant of private sector law, precedents, and practices into Government—root, trunk, and branch. This might work if Government were just another industry. It is not. The Federal program today is a product of the distinctive conditions that exist in Government, just as the private sector program is a product of the quite different conditions that prevail there. What makes the Federal environment so special?

☐ Labor organizations enjoy long and very important relationships with the Congress. Unions in private industry do not lobby their employers for benefits outside and in addition to those negotiated across the table.

☐ Federal employees benefit immensely from a wide variety of statutory and regulatory policies and protections. These have been achieved through significant union input to the political and administrative processes of Government.

☐ The Executive order itself has fostered a positive approach toward union organizing and dealings. In contrast to the private sector, the Federal Government has adopted a position of neutrality on union representation of its employees. Government officials do not mount "vote no" campaigns in union elections.

☐ The Congress has outlawed the strike among employees of the Federal Government—in recogni-

tion of the paramount need to insure the uninterrupted delivery of services to the public. In its place, there is viable and effective machinery for determining economic and other major personnel benefits. While this removes concerted job action as a lawful weapon in collective bargaining, the Government—as employer—has no desire to deny to Federal employees the general level of rights and benefits secured through negotiations in private industry. On the contrary, the rights and benefits that Federal employees enjoy are fully comparable to—and in some ways better than—those in the private economy.

I think it is eminently clear that labor-management policy in the Federal sector cannot be the same as in the private sector. While we have some things in common with collective bargaining as it is practiced in private industry, there are basic and special differences that demand a special and different program for the Federal service.

The Program Now

The state of the program for Federal labor-management relations today is a result of these essential differences as reflected in our continually evolving charter. The Executive order has been revised substantially three times; even now, we are headed toward still another revision as a result of our current review of the program.

As these revisions in the program suggest, ours is not a model of immutable perfection. There are problems, and we have made and continue to make the changes necessary to meet those problems. Some of the inevitable problems that would exist in any program—statutory or Executive order—have been blown up out of all proportion to create the impression that the Executive order program isn't working. To the contrary, I believe that the record in resolving problems amply demonstrates that the overall objectives of Executive Order 11491 are being met and that the machinery for dispute resolution is working well.

☐ Over 370 grievance-arbitration awards have been rendered under the Executive order program, and of course this figure doesn't include the many worksite grievances that are settled in the negotiated procedure and never reach formal arbitration. These awards have resolved disputes in a wide variety of areas—including such areas as administration of pay and leave, promotion, discipline, work scheduling, and representation. The majority of arbitrations have involved installations within the Department of Defense, where a total of only 12 exceptions to arbitrators' awards have been filed—five by management, seven by unions—indicating the high rate of acceptance both parties have given to the arbitration process.

☐ The Federal Labor Relations Council has closed 129 of its 146 cases of all types—negotiability disputes, appeals from determinations in representation and unfair-labor-practice cases, exceptions to arbitration awards. The Council's appellate function has increased dramatically—with three times as many cases closed last year as in the previous year—and the lead time in case processing has been shortened dramatically.

☐ The Federal Service Impasses Panel has closed 92 of its 105 requests for assistance in negotiations—with most of them settled informally. Only 18 cases involved issuance of a formal report and recommendations following factfinding, and 16 of them were accepted in toto by the parties; in the other 2 cases, the Panel's recommendations were used as a basis for settlement. This is the Federal alternative to the economic or "contract" strike, and the record shows wide acceptance by the parties directly involved.

☐ The Assistant Secretary of Labor for Labor-Management Relations has closed 4,385 of his 4,962 cases of all types—representation, unfair labor practice, standards of conduct, grievability/arbitrability—while his Labor-Management Services Administration has supervised 2,063 representation elections. Year-to-year comparisons in the number of elections supervised reflect the recent leveling off in union organizing under the Executive order. And although the number of unfair-labor-practice cases had shown a steady increase from 1971 through 1973, projections based on the first quarter of 1974 indicate there may be fewer such cases this year than last.

These figures demonstrate that the third-party processes under the order are distinguished by their "successes"—that the loudly alleged "failures" in isolated cases are the exceptions that prove the rule. This is not to say problems do not exist; they do, and we are moving ahead to meet them. But they should be viewed in the true and broad perspective of Executive order experience—and that is one of overall and increasing success in surmounting new challenges.

Bilateral Mechanisms

The total environment of labor relations in the Federal Government provides a responsiveness to employee and union concerns that extends well beyond the Executive order framework—in many important directions. The Executive order program realistically cannot be viewed as the alpha and omega of formal and structured opportunities for collective participation in determining personnel policies, practices, and working conditions.

Over and above what is derived through the collective bargaining process under the Executive order program, improvements in Government-wide wages and fringes are obtained through a variety of bilateral mechanisms for national union input. Together, they provide direct union involvement on all the various "personnel policies, practices, and matters affecting working conditions" of Federal employees. If the particular form utilized in a given area is not the same as in private industry, it is because the Congress has determined that the Federal Government is not the same as a private employer for that purpose.

Even in the so-called "bread-and-butter" areas of wages and economic fringes, which have been removed by law from the negotiating table in the Federal sector, unions have a structured means of input. Their representatives serve on a variety of

statutory bodies dealing with Federal employee pay and fringe benefits.

The Pay Comparability Act of 1970 established a Federal Employees Pay Council of five union representatives, who deal with the President's agents in formulating wide-ranging recommendations on the entire system and processes involved in determining pay comparability for white-collar Federal employees.

As early as 1968, the Civil Service Commission established a National Wage Policy Committee of five union and five agency representatives who met face-to-face over a long period of time to establish all policies and operating instructions for the Federal blue-collar pay system. The Committee make-up was modified slightly and established by law as the Prevailing Rate Advisory Committee, which continues to meet weekly to work out systems and problems on the wage board pay program.

Other examples of "bilateralism" beyond the Executive order program include union participation on the Health Benefits and Life Insurance Advisory Committees on economic fringes, and on the Federal Safety Advisory Council. In addition, the Civil Service Commission—long recognizing the necessity and value of involvement by employees, through their union representatives—has, on its own initiative, regularly and systematically consulted with them in the development of Government-wide personnel policies.

The axis that makes all of these systems work in concert is our Federal system's provision for a central personnel authority responsible for personnel policies requiring Government-wide uniformity in which labor relations is fully integrated. This is the role carried out by the Civil Service Commission in assuring that the interworkings of central personnel administration and labor-management relations operate efficiently and effectively.

From the standpoint of effectiveness as well as fairness, it is essential that Government retain this centralized capability for developing and administering policies designed to achieve a necessary degree of uniformity and equity in matters common to employees of more than one agency. This arrangement doesn't retard labor-management dealings; it facilitates them.

Employee representation in the statutory pay and fringe systems plus employee representation in collective bargaining under the Executive order have provided across-the-board opportunities for structured union participation in the formulation and implementation of a wide range of personnel policies, practices, and matters affecting the working conditions of Federal employees.

All of which should make abundantly clear to even the most skeptical critic that if our existing program and mechanisms do not happen to fit some preconceived notion of what they ought to look like, they nevertheless offer extensive opportunities for bilateral involvement.

Forces for Change

In sum, events have not made our system obsolete; rather, they have confirmed its viability and continuing adaptability. In fact, the forces for change in our system can be viewed realistically in three ways:

☐ Changes that can be made successfully within the Executive order framework. The Federal Labor Relations Council has just completed an in-depth process of receiving the written and oral suggestions of unions, agencies, and other interested parties and now is reviewing possible changes in the Executive order program.

☐ Changes that would require the kinds of legislative action we might support. The executive branch is willing to work with organized labor and the Congress

in such statutory areas as authorization for make-whole relief to afford back-pay remedies and for negotiation of binding arbitration of adverse actions—that is, major disciplinary actions.

☐ Changes that would require the kinds of legislation we could not accept and Congress has opposed in the past. Examples include the union or agency shop, negotiation of pay rates and economic fringes on a fragmented bargaining unit basis, the "right to strike."

Meantime, we are continuing to move forward through established systems to deal with acknowledged problems. We have a program we know can work, one we know we can grow with, one we know can promote the optimum balance

among all the parties at interest—Government, its employees, their union representatives, and (above all) the public.

If you accept collective bargaining as a positive force in personnel administration—and we do—then our record to date, over all, is a powerful rejoinder to the notion that the existing system isn't working. It is changing in constructive and purposeful new directions. Now is not the time to impose fundamental and sweeping changes in the ground rules for Federal labor relations—not the time for lawmakers to fix their legislative sights on what is still a moving target.

By any measure, the Federal establishment is a "mega-employer," a vast and complex configuration of activities and missions that best responds gradually and deliberately to new conditions imposed by new systems. This is as true in personnel administration as in any other field of public endeavor. It is doing so now. It will continue to do so as our labor-management system continues to improve with experience.

#

APPEALS DIGEST*

*Significant Decisions of the Board of Appeals and Review

Adverse Actions

Notice of proposed decision

The agency proposed to demote the appellant based on charges of cheating on and compromising an official examination, and of making a false statement in a matter of official interest.

Although the agency properly advised the appellant of his right to review the material upon which it relied to support the proposed action, the appellant contended that all of the information had not been made available to him. The appellant had requested and been denied access to the investigative report on his case. The agency stated that it had not relied on the report.

However, in light of the fact that the incident upon which the charges were based was discovered due to the investigation in question, and that the agency admitted taking statements from employees that were not made available to the appellant even though they were pertinent to the charges, the Board found that the agency did not comply with the intent of the regulations.

The Board stated that even if the action could have been sustained, based only upon the information shown to the appellant, the agency had a duty to allow the appellant access to all of the information it relied upon. If the agency felt that the investigative report in question could not be shown to the appellant, it had a duty to obtain the information in a form that could be made available to the employee for his review.

Accordingly, without making a finding on the merits, the Board reversed the decision of the Commission's first appellate level office and recommended the appellant's retroactive restoration.

Code of penalties

The agency removed the appellee based upon a current offense of unauthorized absence, which was the fourth formal action against the appellee for unauthorized absence. The agency supported its action by referring to its table of penalties, which prescribes the maximum penalty of removal for the third occurrence of that offense.

The Commission's first appellate level reversed the removal action, finding that the agency considered the denial of two within-grade step increases and a 10-day suspension as three prior offenses. The foregoing conclusion was found to be in error since the denial of a within-grade step increase is not properly classified as an offense. Because the two denials of a within-grade step increase had to be eliminated from consideration, the agency's action was reversed.

The agency appealed, contending that it was within its discretionary authority to impose the penalty of removal, notwithstanding its table of penalties, which it argued serves only as a guide. The Board found, however, that the reasons articulated by the agency at the time of the removal included consideration of its table of penalties, and since that consideration had been misapplied, the Board concurred in the decision of the Commission's first appellate level.

Ex parte communications

The appellant questioned the fairness of the proceedings leading to his removal, asserting that ex parte communications of the agency's representative with the decisionmaker denied him due process.

Prior to issuance of the charges against appellant that culminated in his removal, the agency's representative, who presented management's case at the predecision hearing, had served as executive officer. In this capacity he had been involved in various facets of the appellant's work and had expressed dissatisfaction with the appellant's job performance.

The executive officer, among others, subsequently participated in drafting a letter proposing to remove the appellant. After the hearing officer submitted his report of findings and recommendations to the deciding official, the agency's representative engaged in ex parte communications with the deciding official regarding the appellant's case.

Based on the total record, the Board found that the views of the agency's representative permeated all stages in the proceedings leading up to the decision to remove the appellant. That was not to say that the

deciding official did not make up his own mind in finally deciding to remove the appellant from the service. But in the opinion of the Board, the likelihood was great that he made up his mind at least partially on the basis of ex parte communications with the agency's representative who had an adversary stake in the outcome.

The Board held that whether the ultimate result would have been different had there been no ex parte communications was not controlling. Although the decisionmaker had a right to assistance from others, he should have been insulated from the one who presented the case for management. The Board cited *Camero* v. *United States,* 179 Ct. Cl. 520 (April 14, 1967), in which the court stated on page 6:

"It is difficult to imagine a more serious incursion on fairness than to permit the representative of one of the parties to privately communicate his recommendations to the decisionmakers. To allow such activity would be to render the hearing virtually meaningless. We are of the opinion that due process forbids it . . . ."

In view of the foregoing, the Board held that the agency's action in removing appellant from the service could not be sustained. Accordingly, the Board recommended that appellant be restored retroactively to the position from which he was removed.

Any and all reasons

The regional office reversed the decision of the agency to remove the employee for conduct unbecoming a Government employee. It found that the agency decision did not state specifically whether the charge against him was sustained and whether any elements of the employee's past record mentioned in the advance notice of proposed removal were also relied upon to support the final action.

The Board's decision affirmed the region's finding of reversible procedural error, but based upon a different analysis. Although the stated charge was conduct unbecoming a Government employee, referring to appellee's alleged boisterous and crude remarks to a fellow employee, the Board found that the agency had based appellee's removal on other factors. In its appeal, the agency stated that "we have attempted to separate an employee . . . because of his unacceptable employment record," and "it is our opinion that [appellee] is capable of doing bodily harm not only to himself, but to others as well."

Because appellee was not charged with an unacceptable employment record or with being capable of doing bodily harm, and because the agency relied on those factors to sustain its action, the Board found that the action did not comply with requirements of section 752.202(a)(1) of the civil service regulations. This section states that the employee must be given advance notice of any and all reasons for the proposed removal.

Equal Employment Opportunity

Harassment and nonselection for training

Complainant served as a clerk (typing), GS-2, until her resignation. She contacted an EEO counselor and alleged that she was being harassed by her supervisor who accused her of smoking marihuana at her desk and who on various occasions said to her, "That's a good girl." The complainant alleged discrimination on the basis of race and sex. She later alleged that she had been denied access to upward mobility programs and training opportunities.

The complainant resigned soon after filing her complaint, and a week after her resignation she received a decision from the agency in which she was advised that the actions of her supervisor were not proper matters for a formal complaint of discrimination. She was further advised that her additional allegations lacked the specific details needed for them to be properly investigated. The agency also noted that the complainant had resigned from the agency.

The Board found that the matters presented by the complainant were in connection with employment matters over which the agency had jurisdiction, that they were based on the complainant's race and sex, and they were filed by the complainant when she was an employee. The Board found, therefore, that the matters presented were within the purview of part 713 of the civil service regulations.

The agency implied in its decision that the complaint would not be processed because the complainant had resigned from her position with the agency. It is unclear whether the agency determination not to process the complaint was based on the fact that the complainant had resigned, or on the agency finding that the issues presented were either not within the purview of part 713 or were too vague to be investigated. Nevertheless, the Board found the agency's determination was incorrect since the issues presented were proper matters for a complaint of discrimination.

The Board further found that the agency had failed to attempt to clarify the issues presented in the complaint so that they could be investigated, and that there were no provisions in the civil service regulations allowing an agency the right to decline to process a complaint of discrimination on the ground that the complainant resigned from the agency during processing of the complaint. Therefore, the agency decision was rescinded and the complaint remanded for further processing and a new adjudication.

Reprisal

The complainant filed a complaint of discrimination and alleged that he had been denied promotion because of his race and national origin. He also alleged that in reprisal for his having filed this complaint the agency had not assigned work to him or given him opportunities for travel, had denied him training, and had not given him a parking space.

The Board found that the evidence of record did not support the complainant's allegations with respect to his nonselection for promotion, and that there was no evidence that his failure to receive work assignments, travel opportunities, or a parking space was the result of reprisal action against him by the agency.

The complainant, however, did submit a note signed by an agency official, dated subsequent to his filing the complaint of discrimination, in which the official stated that since the complainant had a complaint pending against the agency, he saw no need for training to be given to an employee who was so bitter. The Board found this note sufficient evidence to support the complainant's contention that reprisal action had been taken against him with respect to opportunities for training because he filed a complaint of discrimination. The Board, therefore, recommended that the complainant be permitted to take the next job-related training course he requests, consistent with types of training previously approved for employees by the agency.

Reduction in Force

Overlapping RIF notices

Appellant received a reduction-in-force notice dated March 1, 1973, informing him that he was to be changed from his WG-10 position to a WG-5 position effective April 30, 1973. Appellant subsequently received a second reduction-in-force notice dated April 2, 1973, informing him that he was to be separated from the WG-5 position effective June 1, 1973. The record reflects that appellant was not released from the WG-5 position because that job was abolished, but rather he was *displaced* by another employee with greater retention rights.

Appellant contended that subchapter 7-1(a) of chapter 351 of the FPM was designed to protect an employee affected by one reduction in force from being adversely affected by another reduction in force within 3 months of the effective data of the first action. That section provides that a position to which an employee is assigned in a reduction in force must last at least 3 months in order to meet the requirement of assignment to a "continuing" position.

Appellant further contended that the overlap of the reduction-in-force notices caused both actions to be procedurally defective. The Commission's first level appellate office found no violation of appellant's reduction-in-force rights, and the Board concurred in that decision. The Board held that the cited section of the FPM does not provide that an employee assigned to a continuing position in a reduction in force must be retained in that position for 3 months, nor was it designed to protect an employee affected by one reduction in force from being affected by another reduction in force within 3 months of the effective date of the first action.

The Board noted that the overlapping reduction-in-force notices resulted from a departmental regulatory provision for a 60-day notice period, whereas the Commission required only a 30-day notice period.

Not within purview

The appellant was released from her competitive level and received an offer of a position at a higher grade and rate. She appealed to the Board from a Commission first level appellate office decision, which had found no violation of her reduction-in-force rights. The appellant contended that she should have been offered the same position in a different location.

The Board noted that the action had been processed as a promotion under section 335.102 of the civil service regulations even though the agency maintained that the position had been offered in lieu of separation by reduction in force. The Board found that the reduction-in-force regulations do not contemplate a situation where an employee has received a promotion. Since the agency action was properly effected under merit promotion procedures, the Board determined that it was not an appealable matter under the reduction-in-force regulations. The Board accordingly vacated the Commission's first appellate level decision and found the appeal not within the purview of the Commission's appellate jurisdiction.

Acceptable Level of Competence

Reconsideration proceedings

The agency processed as a "grievance" the appellant's request for reversal of the decision to withhold his within-grade salary increase. The appellant appealed to the Board from the agency's decision on the "grievance," whereupon the agency contended that the appellant had not requested reconsideration under section 531.407(d) of the civil service regulations, and therefore that he did not have a right of appeal to the Board.

The Board noted that both the appellant and the agency had referred to the appellant's request as a "grievance." Even so, the Board found that the appellant's "grievance" constituted a request for reconsideration. The Board gave as its reasons for this determination the fact that the "grievance" was submitted within the time limit given in the notice of negative dete mination for submitting a request for reconsideration, it was submitted to the official identified in that notice as the proper recipient of such a request, and the sole subject on the "grievance" was the negative determination at issue.

The Board also found that the agency's decision on the "grievance" constituted a reconsideration decision under section 531.407(d), and therefore that the appellant had appeal rights to the Board from that agency decision.

—William P. Berzak

Information Sharing for Productivity Improvement

by ELSA A. PORTER, Director, Clearinghouse on Productivity and Organizational Effectiveness, CSC

A NEW SERVICE opened its doors to Federal managers in June—the Civil Service Commission's Clearinghouse on Productivity and Organizational Effectiveness. It is designed to meet the need for information, advice, and assistance on state-of-the-art developments in the personnel management aspects of productivity improvement.

Establishment of the Clearinghouse reflects the widespread concern of government managers for increasing the productivity and effectiveness of their organizations. And it is tangible recognition of the fact that one of the important ways managers can do this is through better management of their human resources.

As John D. R. Cole, Director of the Commission's Bureau of Personnel Management Evaluation, put it recently in speaking before the 1974 National Conference on Public Administration:

"All conscientious managers know that enormous quantities of human energies are being wasted all around them, both through misuse and through dis-use of people's skills, knowledges, and abilities and their potential for learning. What they don't know is how to measure that loss or how to repair it in any substantial way."

The Civil Service Commission is attempting to help them through a program of systematic research and development, and by sharing information on new personnel management practices that have proved highly successful in government organizations.

The Commission's "productivity program" grew out of the 3-year CSC/OMB/GAO Joint Project To Measure and Enhance Productivity, which ended in 1973 after laying the foundation for a permanent productivity measurement system for the Federal Government—an accomplishment Sen. William Proxmire recently hailed as "a major breakthrough for the Government."

The productivity measurement system, which now covers 60 percent of the Federal work force, shows that contrary to popular belief government productivity has been rising. In Senator Proxmire's words from the *Congressional Record* of May 13, 1974, it also shows that "the taxpayer is not only getting more for his money than ever before, but he can get far more in the future."

The Commission is focusing its efforts on the how-to-do-it of productivity improvement. At the same time, we are taking pains to point out that pushing employees to work harder through speedups or arbitrary staffing reductions is *not* the way to do it.

The way to improve productivity is to use our resources better—to work smarter. That means better processes, equipment, and related technologies. It also means better utilization of people—improved supervision, communications, training, job design, and the organization and scheduling of work. There is a growing body of evidence that improvements in these areas can yield high payoff in terms of improved organizational performance, both quantitative and qualitative.

The task of the Clearinghouse is to identify the best practices in this field and to communicate them to operating line managers and personnel professionals. One of the large problems managers and personnel professionals have faced is the paucity of hard evidence that one management technique works better than another, and under what circumstances. Attempts over the past decade to apply the latest behavioral science concepts to the management of government organizations have been both praised and challenged. Now, with a growing ability to measure organizational performance, we can test these new approaches and apply them appropriately and with confidence.

Research and Demonstration

The initial step the Commission took was to discover what significant new activities were underway in the agencies to improve organizational performance.

Early this year some 850 Federal installations were surveyed in an effort to locate significant experiments being undertaken in the application of a variety of behavioral science concepts to organizational improvement. The survey included all Federal installations with over 1,000 employees and a 25 percent sample of those with fewer than 1,000 employees. Nearly 200 affirmative replies were received, indicating widespread activity and interest.

More than 500 separate projects were reported in such techniques as organization development, job enrichment, team building, participative management, and flexible work hours. Very few agencies, however, had attempted to get hard evidence of the effects of these efforts on improved organizational performance. Most evaluations consisted of subjective impressions on the part of managers of increased morale and decreased turnover, absenteeism, and other similar personnel-related measures.

The locator survey responses are now being analyzed to determine where we can tap the experience and knowledge that is already in the agencies and where further research and demonstration are needed. Following this analysis we will work cooperatively with a number of agencies to set up closely measured experiments in a broad range of personnel management applications so that we can begin to build a body of sound, tested knowledge about the workings of various kinds of government organizations and the proper management of the people in them.

Five such experiments were initiated last year to demonstrate the effectiveness in five different government environments of a diagnostic process using survey feedback techniques. The experiments were financed by the National Commission on Productivity and were monitored and evaluated by both the National Academy of Public Administration and the Personnel Research and Development Center of the Civil Service Commission.

The results of these experiments to date are incomplete but encouraging. In one agency, the organizational diagnosis uncovered a problem of job design, which is now being remedied by job enrichment. In another agency, a manufacturing organization, a problem of pay incentives was revealed, and steps are being taken to install a new system of rewards for high-producing groups of employees.

These and other similar experiments will be tracked over time by the Commission's research team in cooperation with the operating agencies, with a view to their use as models for other agencies to follow. By centralizing and publicizing this R&D effort, the Commission hopes to prevent wasteful duplication of effort and make the processes of change easier for those who want to follow.

A good example of the advantage of this information interchange is the matter of flexible work hours. Many private businesses in the past few years have adopted a policy of "flexitime," which gives employees varying degrees of latitude in choosing the hours they work. Claims of improved morale and higher productivity have followed. Many Government managers have been interested in applying this policy in their own organizations, but felt constrained by the statutes governing hours of work in the Federal sector.

Early this year, following a request for guidance from the Social Security Administration, the Commission developed a how-to-do-it guide on the institution of flexible work hours, describing the range of flexibilities available to agency managers within constraints of the law and offering a checklist of key steps to be taken in attempting such a program. An experiment in flexible work hours was begun in SSA and is currently in progress. (The guide is available on request from CSC's Bureau of Policies and Standards, Pay Administration Section, or from the Clearinghouse.)

Productivity Data Bank

Information on what is going on in government to improve personnel management, where the successes are, and where one can get assistance is now available from the Clearinghouse's Productivity Data Bank.

The data bank is, in effect, a specialized reference library on the personnel management aspects of productivity improvement in the government sector. It contains reference data on model programs, successful case histories, and state-of-the-art publications, such as journal articles or bibliographies that personnel professionals and managers would find useful in designing improvement programs of their own. It also provides a referral service to other sources of information, advice, or technical assistance inside and outside the Commission.

The current data base is small, but growing. It contains case histories collected during the 3-year Joint Project and the significant, measured experiments reported in this spring's Government-wide locator survey.

The data bank is linked to other key centers of information within the Commission, such as the Personnel Management Information Service of the Bureau of Intergovernmental Personnel Programs. (PMIS disseminates information on State and local government projects generated by work accomplished under the Intergovernmental Personnel Act.) There is also a link to external sources of information, such as the National Commission on Productivity and the National Technical Information Service, the latter being the central data bank for R&D activities throughout the country.

Much of the work of the Clearinghouse will be to enlarge the data base and to keep it current. As agency experiments with different approaches to organizational improvement move forward, the results will be documented and fed into the data bank. That information, in turn, will be made available to those who request it—by mail, telephone, or in person. In addition, the Clearinghouse will share current information through seminars, workshops, and conferences with key groups of managers and personnel professionals.

Improving Government Operations

The behavioral and management sciences are creating new tools and techniques for improving government operations. One of them, the productivity measurement system, constitutes a real technological breakthrough in the field of public administration. Others, like Management by Objectives, have been around for a long while but only recently have been adapted to government organizations. These and the new behavioral science approaches to managing organizations present new opportunities for improving public services and reducing their cost to the taxpayer.

Government employees and managers have consistently worked to improve the efficiency and effectiveness of their operations, but since their progress in doing so was not measured, it has not been visible to the public. The existence today of a measurement system, together with new management improvement technologies, offers exciting opportunities for significant measured change.

Personnel professionals, especially, will have a new and important role to play in helping to realize this change. The new Clearinghouse service is aimed at hastening and facilitating the application of these new technologies by managers and personnel professionals throughout government.

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For assistance, advice, or information, contact:
Clearinghouse on Productivity and Organizational Effectiveness
U.S. Civil Service Commission
Bureau of Personnel Management Evaluation
Washington, D.C. 20415
(202) 632-3824

SPOTLIGHT ON LABOR RELATIONS

Federal agencies and labor organizations are learning to work with each other in a productive bilateral atmosphere, generally devoid of major disagreements or long delays in the negotiating process. This overall profile emerges from a comprehensive survey of more than 3,000 exclusive bargaining units conducted by the Civil Service Commission in conjunction with the Office of Management and Budget.

Clocking the Negotiations

Although it took them a while to get there, once the parties came to the bargaining table they generally managed to reach final agreement with dispatch. As a rule, however, the existence of a prior dues-withholding agreement considerably extended the period of time between certification or recognition and the receipts of a request for negotiations.

☐ In nearly two-thirds of the units, dues-withholding agreements were negotiated before an initial basic agreement—in part reflecting the fact that some units achieved dues withholding under formal recognition not entitling the union to negotiate agreements on other matters.

☐ Delays in starting negotiations were reported in just under one-fifth of situations under agreements or in collective bargaining—most commonly attributed to preparations for the negotiations, turnover among management and/or union officials, scheduling conflicts, and the like.

☐ Once ground rules were determined (normally during the first week), the parties completed negotiations within 3 months in about two-thirds of the units. But in those units with prior dues-withholding agreements, it commonly took 6 months or more to negotiate a basic agreement—with almost three-tenths of them having gone more than 2 years without a basic agreement.

Official Time: The Long and Short of It

The survey also tends to show that while official time for union negotiators has been a troublesome issue, it was not widespread statistically. And once the parties reached agreement on the total amount of official time, the union used less than allotted.

☐ The prevailing pattern for official time for union negotiators was 40 hours maximum, with the prevailing number of union negotiators being three or four—each category accounting for over half of the situations. Yet the actual time used per negotiator was 20 hours or less in almost three-fifths of the cases, while less than 9 percent used more than 40 hours.

☐ Negotiations were completed in 10 or fewer bargaining sessions in over seven-tenths of the units, whereas negotiations took more than 20 sessions in only about one-eighth.

At the Table—and Beyond

The issues that consumed the most time at the bargaining table also tended to figure most prominently in requests for exceptions to regulations and for third-party assistance (although not in the same order). Third-party assistance was utilized in only 16 percent of the units—with mediation predominant—while exceptions to regulations were requested in 12 percent.

☐ Besides scope of the grievance procedure (indicating apparent confusion and problems with the 1971 amendments to Executive Order 11491 tying the negotiated procedure to interpretation or application of the agreement), the most time-consuming issues at the bargaining table included promotion policies and procedures, overtime policies and practices, time allowances for union stewards, management rights, and official time for negotiations (in that order).

☐ Requests for exceptions to regulations most commonly involved promotion policies and procedures, travel time, and scope of the grievance procedure (in that order). Waiver of regulations was granted to almost one-fifth of the requests, including a 50-percent rate on requests involving disciplinary procedures.

☐ The issues most often requiring third-party assistance included promotion policies and procedures, scope of the negotiated procedure, management rights, official time for negotiations, dues withholding, workweek definition, and overtime policies (in that order). Besides mediation (344 cases), the Impasses Panel was utilized in 54 cases, the Council in 23, and the Assistant Secretary in 6.

Bargaining on Review

On the negative side, the agency approval process tended to take as much or more time than the parties used at the bargaining table to reach agreement. In nearly one-fifth of the cases, special problems or circumstances were cited in the approval process—including multi-tiered clearance requirements, excessive delays in processing the approval, repeated rejections of sanitized provisions, and lost or misplaced agreements.

☐ In about seven-tenths of the cases, the agreement was sent forward for agency approval within a month after local negotiations had been wrapped up; in 7 percent, it went forward in 3 to 6 months.

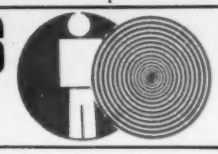
☐ Issues identified as most troublesome in securing agency approval included grievance procedures not in conformity with the Executive order's amendments, limitations on assignment of unit work, pay policies and practices, scope of the negotiated procedure, promotion and placement, and dues withholding (in that order). But most changes required by higher level agency authority were described as minor, technical revisions in agreement language.

☐ Following settlement at the local level, the approval process took 3 or more months in over one-third of the cases; in only a little over one-fourth was approval completed in less than a month. (These figures include time taken to resolve negotiability issues, and to renegotiate provisions rejected by higher authority.)

The most favorable experiences with the approval process were reported where the parties had managed to expedite the requirement—notably where the agency was experimenting with delegations of approval authority or where continuing dialog with higher level authority during the negotiations made approval a pro forma exercise.

—David Scott Dickinson

STANDARDS AND TESTS



The FWS—A Milestone

October 1, 1974, will be a milestone in the development of the Federal Wage System. Conversion from the various agency systems to the FWS will be completed on that date. At the same time, the Civil Service Commission will have completed a basic set of Job Grading Standards.

Our original mandate seemed deceptively simple. In 1965 the Civil Service Commission was given the responsibility to develop a grading system whereby jobs " . . . are to be graded on the basis of the same set of standards and grade criteria, regardless of the department or agency involved, or the community in which they are located."

At that time the differences in the systems and practices used by the various departments to fix the pay for their Federal employees in trades and labor occupations had barely surfaced. They became more and more obvious as each job grading standard was issued and interested parties gave us their viewpoints.

The initial standards were developed to cover jobs in the key ranking job list. Few problems were anticipated with these occupations because the grade levels had been set jointly by agencies and representatives from labor organizations. When faced with the full impact of the initial changes in grade, however, numerous unanticipated problems postponed the completion of many of the projects and we had to increase our staff to offset the delays.

Completion of the conversion period will mark the end of the indefinite pay retention provisions currently in effect. After October 1, 1974, most of the regular Wage Grade employees who are changed to a lower grade or rate of pay will be entitled to the normal 2-year pay retention if otherwise qualified.

There will be some exceptions to the October 1 deadline. For example, the time required for printing standards that have been completed before the deadline undoubtedly will delay the actual distribution date beyond the official issue date that is indicated on the cover of the standards. For each of these occupations, the Civil Service Commission will provide a specific deadline date for taking appropriate job grading actions in order to protect the employee's indefinite pay-saving benefits.

Positions in the printing and reproduction occupations and positions paid from Special Wage Schedules also will be excepted until occupational studies are completed and the Commission issues conversion instructions for these occupations.

By October 1, 1974, we will have published 115 job grading standards in addition to the broader coverage of the general standards for helper and intermediate jobs, leaders, supervisors, inspectors, and production facilitating jobs.

The Commission considers these job grading standards as the basic set. They will be directly applicable to approximately 90 percent of the total blue-collar work force. With the assistance of this basic set, classifiers should be able to "wiggle in" the remainder of the jobs in the installations, thereby enhancing the goals of an "equal-grade-for-equal-work concept."

When the basic set of standards is completed, the Commission has plans for further improvements in the standards program. The first order of business will be the restructuring of the Handbook of Blue-Collar Occupational Families and Series to reduce the vast number of existing titles and series.

We also plan to enter into a maintenance phase by restudying those occupations that need it if there has been difficulty in applying the current standard or because of changes in occupational technology. In addition, we will continue to publish new standards for occupations that display unrealistic grade patterns and also to resolve special problems that agencies, program evaluators, and appeals examiners continue to experience.

Finally, there will be an increased emphasis on writing and issuing Qualification Guides until this program matches the basic set of grading standards.

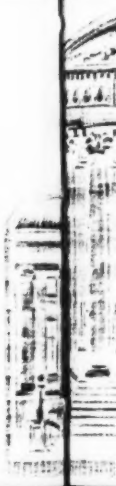
Until these objectives have been attained, we cannot say that the goals of the Federal Wage System have been fully achieved.

The inevitable growing pains of this long and arduous task have been advertised more than the successes. The unavoidable adverse actions have naturally received more publicity than the upgrades. Obstacles to the establishment of an orderly Government-wide wage system have been trying, but after this milestone has been passed, the Civil Service Commission is confident that the wage system will continue to grow from a solid foundation.

—Donald E. Hoag

DECISIONS OF THE 1973-74 TERM

Public Employment



THIS PAST YEAR has been a busy and fruitful one for the Civil Service Commission and Federal employees before the Supreme Court of the United States. Not only has the Commission actively participated as a litigant in matters of importance before the Court, but decisions in cases not involving the Commission could have a profound effect upon civil servants and Government personnel policies.

The Court has had to decide such transcending issues as the impact of the Lloyd-LaFollette Act on Federal employees' First Amendment rights; the nature of the interest that an employee has in continued Federal employment and equal employment opportunity matters, which while not directly related to Federal employment will undoubtedly have a great impact on it. Further, there are cases still pending from the 1973-74 term that will affect Federal personnel practices.

By CARL F. GOODMAN
Deputy General Counsel
U.S. Civil Service Commission

Arnett v. *Kennedy*

Perhaps the most significant case decided, from the civil servant's point of view, is *Arnett* v. *Kennedy,* 42 U.S.L.W. 4513 (1974). In *Arnett,* the Court upheld the Commission's regulations calling for post-termination hearings in connection with adverse actions taken against nonprobationary competitive employees. Further, it reaffirmed the right of a governmental employer to discharge an employee whose behavior, including speech, is detrimental to the efficiency of the employing agency.

This one decision upholding major Commission practice will have a far-reaching effect on numerous cases involving adverse actions presently pending before the Federal district courts. And it serves to remove from the shoulders of agencies the specter of reversal where hearings in adverse actions take place after termination has been achieved. At the same time it establishes the clear right of nonprobationary employees in the competitive service to a post-termination hearing in adverse action cases.

Briefly stated, *Arnett* concerned an employee of the Office of Economic Opportunity who was discharged on the ground that he had made false and defamatory statements about other OEO employees including, specifically, his supervisor.

Rather than follow the procedures set out in the regulations for challenging such a removal action, the employee instituted suit alleging that his discharge was improper for two reasons. First, he alleged a constitutionally protected interest in continued employment, which could only be terminated after a full "due process" hearing, and second, he contended that the standards of the Lloyd-LaFollette Act providing that discharge can be had "for such cause as will promote the efficiency of the service" were so vague, especially when applied to speech, as to be unconstitutional under the "void for vagueness" doctrine.

A three-judge district court in Chicago ruled in the employee's favor on both issues, setting off a wave of litigation challenging adverse actions on the ground that employees could be discharged only after a full hearing.

In previous decisions (*Board of Regents* v. *Roth,* 408 U.S. 564 (1972), and *Perry* v. *Sindermann,* 408 U.S. 593 (1972)), the Court had established that a government employee having tenure rights had such an expectancy of continued employment as to amount to a property interest which, under the Fifth and Fourteenth Amendments'

due process clauses, could only be taken where due process was followed.

Thus, the schoolteacher in *Roth* was found to have no constitutionally protected interest in his job because he was employed under a 1-year contract and had no tenure. *Sindermann,* on the other hand, was found to have tenure because the mutual understanding between his governmental employer and himself was to the effect that he would not be removed except for cause. This tenure interest meant that Sindermann was entitled to a hearing if his employer discharged him.

What *Roth* and *Sindermann* left undecided was when such a hearing must take place. *Arnett* resolved this issue.

Nonprobationary Federal employees in the competitive service may be discharged only for "such cause as will promote the efficiency of the service," and thus have rights similar to those held by Sindermann. The Lloyd-LaFollette Act, which creates those rights, also provides that no "trial or hearing shall be required except at the discretion of the officer making the removal." Commission regulations, however, do provide for a hearing, after termination.

Three judges on the Supreme Court held that nonprobationary competitive employees were not entitled to any hearing because the same statute that creates their "tenure rights" provides that no hearing need be held. As Justice Rehnquist put it, the statute could not be bifurcated as plaintiff desired, but rather the employee plaintiff "must take the bitter with the sweet."

Two concurring Justices found that the employee's "tenure rights" were entitled to constitutional protections—namely, a hearing, but upon balancing the interest of the employee against that of the Government employer concluded that the weight fell more heavily on the Government's side of the scales, and thus "a prior evidentiary hearing is not required and . . . the present statutes and regulations comport with due process by providing a reasonable accommodation of the competing interest."

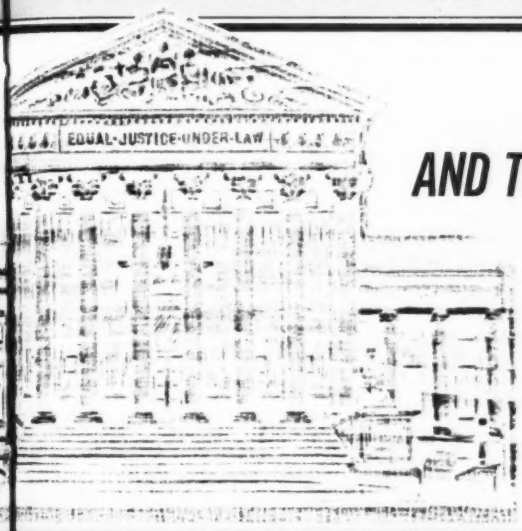
As significant as the Court's rejection of any need to hold pretermination hearings was the fact that six Justices set forth their view that nonprobationary employees covered by the Lloyd-LaFollette Act were entitled to a hearing upon an adverse action discharge. Such hearings are presently provided by the Commission, post-termination.

On the free speech issue, the Court did not, as some have suggested, open the floodgates to governmental restriction on the free speech rights of employees. Rather it found that the proper test to be employed was that which it had set out in *Pickering* v. *Board of Education,* 391 U.S. 563, 568 (1968), to the effect that:

"The problem in any case is to arrive at a balance between the interest of the teacher [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer in promoting the efficiency of the public services it performs through its employees."

The Court was of the view that the Lloyd-LaFollette Act did not authorize discharge for speech that is constitutionally protected, but rather "the Act proscribes only that public speech which improperly damages and impairs the reputation and efficiency of the employing agency, and it thus imposes no greater controls on the behavior of Federal employees than are necessary for the protection of the government as an employer."

The Court made it clear that recklessly false and defamatory statements concerning one's supervisor could properly be considered as cause for discharge that would promote the efficiency of the service.



AND THE Supreme Court

Sampson v. *Murray*

While *Arnett* concerned itself with the question of a nonprobationary competitive employee's hearing rights, *Sampson* v. *Murray,* 42 U.S.L.W. 4221 (1974), concerned itself with the proper relations between the judiciary and an administrative agency.

In *Sampson,* a lower Federal court had enjoined the termination of a probationer employed by the General Services Administration. While it is true that probationers normally do not have appeal rights, the employee in *Sampson* was entitled to an appeal because she charged that her removal was based upon conditions arising before appointment, a situation for which the Civil Service Commission provides probationers with a limited appeal. The lower Federal courts had prohibited the discharge prior to appeal because of some concerns about the grounds for discharge.

In reversing that action, the Supreme Court made it clear that the courts should not intervene in such matters until after the employee had gone through and exhausted the administrative process. *Sampson,* when taken together with the Court's earlier decision this year in *Christian* v. *New York State Department of Labor,* 42 U.S.L.W. (1974), indicates a preference by the Supreme Court for the utilization of and exhaustion of administrative remedies before judicial consideration of Federal employee matters. In doing so, the Court referred to the "well-established rule that the Government has traditionally been granted the widest latitude in the 'dispatch of its own internal affairs.' "

Cleveland Board of Education v. *LaFleur*

Last year in *Frontiero* v. *Richardson,* 408 U.S. (1973), the Court had found that a Department of Defense regulation setting forth different standards for when male and female employees were entitled to dependent benefits was an unconstitutional sex discrimination that violated the Fifth Amendment's due process clause. This year women's rights—and particularly those of publicly employed women—were again before the Court.

In two similar cases, *Cleveland Board of Education* v. *LaFleur* and *Cohen* v. *Chesterfield County School Board,* Courts of Appeals had reached diametrically opposed decisions. The Sixth Circuit had found a school board's mandatory maternity leave rule to be in conflict with the equal protection clause of the Fourteenth Amendment, while the Fourth Circuit had upheld a similar rule.

The Supreme Court found the rule, under which pregnant teachers were required to go on unpaid maternity leave several months before the expected birth (and to remain on leave for a specified period after birth), in conflict with the teacher's right "to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." The Court rejected the school board's argument that the maternity leave rule had a rational relationship to a valid state interest of preserving continuity of instruction. But recognizing the public employer's right to have a reasonable work schedule and backup, the Court indicated approval of a requirement that pregnant employees give substantial advance notice of the due date and hence the intended leave.

The Court, recognizing that "the ability of any particular pregnant woman to continue at work past any fixed time in her pregnancy is very much an individual matter" and weighing that against the administrative convenience of presuming that all pregnant women are unfit to teach past the fourth or fifth month of pregnancy, concluded that "administrative convenience alone is insufficient to make valid what otherwise is a violation of due process of law." While rejecting an arbitrary time limitation on when the employee could return to work after giving birth, the Court approved of a requirement that before such return the employee submit a medical certificate from her physician.

In *Cleveland Board* the Court has continued its policy of rejecting sexual classifications made for administrative convenience. It has again rejected sexual stereotypes in favor of treating women on a personal or individual basis.

The Court recently upheld provisions of the California disability program prohibiting payment for disability resulting from normal pregnancy. The Court held that the State had a rational basis for finding that the expense of covering normal pregnancy would curtail the remainder of the program. The Court noted that limiting one form of coverage, for a legitimate purpose, did not constitute sex discrimination absent a showing that this was a pretext for invidious sex discrimination.

Equal Employment Opportunity

The Court continues to hear equal employment opportunity cases that could have effects on public employment. *Cleveland Board* would surely fall into this category.

Last year in *Sugarman* v. *Dougall,* 411 U.S. 634 (1973), the Court struck New York State's across-the-board citizenship requirement for entry into the State's civil service. In doing so the Court indicated that citizenship was a valid job-related factor and could be a requirement in regard to "State elective or important nonelective executive, legislative, and judicial positions for officers who participate directly in the formulation, execution, or review of broad public policy. . . ." The Court specifically declined to rule on whether the U.S. Civil Service Commission's regulations setting forth a citizenship requirement in the classified civil service were valid.

That question has now been presented to the Court as a consequence of the Solicitor General's filing of a petition for certiorari (i.e., a

request for review) in *Mow Sun Wong* v. *Hampton.* In this case the Ninth Circuit Court of Appeals, relying on *Sugarman,* struck the Civil Service Commission's regulation. The Supreme Court has decided to hear the case. Meanwhile, the Court of Appeals has withdrawn its mandate and the Commission's regulations remain in effect.

In *Mayor of City of Philadelphia* v. *Educational Equality League,* 42 U.S.L.W. 4405 (1974), the Supreme Court reversed a Court of Appeals decision, which had found that the previous Mayor had engaged in racial discrimination in the selection of an advisory panel. The Court's decision was based on its inability to find, as a fact, that discrimination was involved. What is more significant for public employers is the comment of the Court regarding the rights of elected officials when making discretionary appointments, such as the advisory panel involved there.

The Mayor had argued that under the separation of powers doctrine the Judiciary could not review his executive discretionary appointments. The argument was misplaced because the separation of powers doctrine, while applicable in the Federal Government, does not apply to challenges by State executive officials to Federal judicial action.

Nonetheless and without deciding on the validity of the argument, the Court noted that "to the degree that the principles cited by the Mayor reflect concern that judicial oversight of discretionary appointments may interfere with the ability of an elected official to respond to the mandate of his constituency, they are in point."

It may be that the Court is pointing the way for a rule to govern an elected official's discretionary appointments that is different from the ordinary EEO rules governing career civil servants. A rule of this nature would affect such appointments as Federal judges, Ambassadors, Cabinet officers, etc.

The 1972 Amendments to Title VII of the Civil Rights Act of 1964 were before the Court in an unusual employment context. In *Mancari* v. *Morton* a three-judge district court in New Mexico held that the Indian Preference Act (under which Indians are given employment preference in the Bureau of Indian Affairs of the Interior Department) was impliedly repealed by section 717 of the Equal Employment Opportunity Act of 1972.

In arguments before the Court, the Solicitor General has urged that it was not the intent of Congress to repeal the Indian Preference Act and further that the Act does not constitute a racial discrimination in favor of Indians, but rather is designed to give preference in employment at the BIA to those persons whose property is administered by BIA—i.e., tribal Indians. The Supreme Court upheld the preference in an opinion which makes it clear that no racial preference is involved—but rather a matter of self-determination through employment of tribal Indians in BIA, which administers tribal property.

DeFunis* v. *Odegaard

Perhaps the most closely watched equal opportunity case of the 1973-74 term was *DeFunis* v. *Odegaard,* involving the University of Washington's dual admission system for minority and nonminority applicants to its law school. DeFunis, an applicant who was not accepted by the school, claimed that he had been denied admission because of his color (white). The case, while dealing with an educational institution, was felt to have potential impact in the public employment field affecting rights of applicants for public employment and perhaps even promotion policies.

The lower Washington court, before whom DeFunis sued, ordered the law school to admit him, and even after the Supreme Court of Washington upheld the University's system he continued in school under an order of Supreme Court Justice Douglas. As a result, he was in his last semester when the Court heard the case.

In a closely divided opinion (5-4) the Court held that the case was moot because DeFunis was to graduate soon anyway, and thus no longer was there any real dispute between him and the University. Those who had anxiously awaited the decision found that it had decided nothing.

In a dissenting opinion Justice Douglas made clear his view that "Minorities in our midst who are to serve actively in our public affairs should be chosen on talent and character alone not on cultural

orientation or leanings," and that:

"There is no superior person by constitutional standards. A DeFunis who is white is entitled to no advantage by reason of that fact; nor is he subject to any disability, no matter his race or color. Whatever his race, he had a constitutional right to have his application considered on its individual merits in a racially neutral manner."

Justice Douglas noted that the main problem was to consider applications in a racially neutral manner, and in doing so testing procedures such as the law school aptitude test had to be reconsidered. He went on to state that it might be advisable to consider "an

individual's prior achievements in light of racial discrimination that barred his way as a factor in attempting to assess his true potential. . . . " In rejecting proportional representation, Justice Douglas said:

"The State, however, may not proceed by racial classification to force strict population equivalencies for every group in every occupation, overriding individual preferences. The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized."

Conclusion

The 1973-74 term of the Supreme Court has fundamentally affected the rights of Federal employees and practices of the Commission. The nature of Federal employment has finally been resolved, and a nonprobationary employee's right to a post-termination hearing in an adverse action situation has been confirmed. At the same time, the Commission's appeal procedures that do not call for pretermination hearings have been given a constitutional go-ahead, and the Court's emphasis on exhaustion of administrative remedies has placed a further burden for judicious action on appeals examiners.

The Lloyd-LaFollette Act's standard, efficiency of the service, has been held to be applicable to employee speech as well as conduct and has been found to be sufficiently specific so as to pass constitutional muster. The equal employment opportunity rights of public employees have taken another step forward in *LaFleur*. And while *DeFunis* has raised many new questions, the views of Mr. Justice Douglas show that the most progressive of judges will reject racial discrimination no matter what the color of the person discriminated against.

In some cases the employee won, in some the employee lost. But in all cases the ultimate winner seems to have been the public. And that's as it should be.

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THE AWARDS STORY THE AWARDS STORY

Incentive Awards Support Energy Conservation

The Federal Government has assumed a leadership role in helping to meet the Nation's vitally important energy challenge. Many significant steps to curtail energy use were taken by agencies in response to the President's call for a 7-percent energy reduction during FY 1974.

Results have been excellent, with many agencies using incentive awards to encourage and recognize outstanding organizational and individual achievements in energy conservation.

Examples of recent agency actions include:

☐ Department of the Interior presented an outstanding service award to Donald P. Hodel, Administrator of the Bonneville Power Administration, for his leadership in developing a highly successful energy conservation program during the 1973 drought in the Pacific Northwest.

☐ Department of Commerce recently conducted a poster design contest to solicit employee ideas on how to conserve energy or on ways and means for employees to contribute to energy conservation. Winning posters will be used in the employee suggestion program and other promotional activities.

☐ Department of Health, Education, and Welfare presented its first award for energy conservation to Harry J. Moore, Jr., for his suggestions to install louvers in doors to keep outside air from rushing into the building and to install automatic controls on vehicle ramp doors.

☐ General Services Administration granted a suggestion award of $660 to Donald Kucera for his idea to install timer switches in service closets, which resulted in a saving of $5,520. Mr. Kucera had noticed that the lights in these closets were left on habitually even though the closets were used only occasionally.

Initiatives in Incentive Awards

The Civil Service Commission is working with agencies to develop two publications intended to assist in improving the operation of incentive awards programs throughout Government. Guidelines for the evaluation of incentive awards programs, as well as a pamphlet for supervisors, will be completed during the early part of FY 1975.

The need for periodic in-depth evaluation of the incentive awards program at headquarters and field levels has been of continuing interest both to agencies and to the Civil Service Commission. The General Accounting Office reinforced this need in its report of

November 1, 1973, entitled "Improving the Effectiveness of the Government Employees' Incentive Awards Program." In that report, GAO recommended that the program be reviewed in sufficient depth to identify program strengths and weaknesses.

It was in response to this GAO recommendation that the Commission began to develop guidelines for the use of agencies in self-evaluation of their programs. These guidelines will be of value in measuring program effectiveness, identifying problem areas, and setting goals and objectives. The guidelines may be tailored for use at all organizational levels, and if effectively used should lead to improvements in program policy and operations.

Recognized as the key person in the successful operation of the incentive awards program is the supervisor. Discussions with incentive awards officers, as well as reviews of Commission personnel management evaluation reports, have identified the continuing need to improve supervisors' understanding of how the program may be used to stimulate constructive ideas and outstanding job performance.

To meet this need, a pamphlet is being designed to provide supervisors with a basic understanding of the effective use of incentive awards. It is intended that this pamphlet be given wide distribution to supervisors in all departments and agencies.

Pecora Award Established

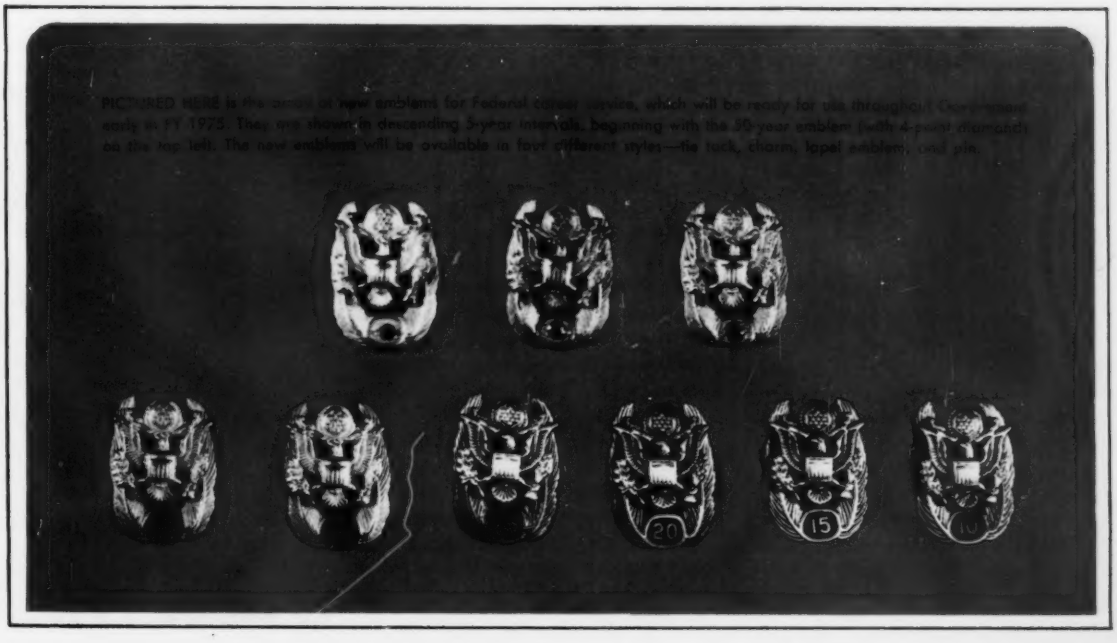
Recently the National Aeronautics and Space Administration and the Department of the Interior jointly established an award to honor the memory of Dr. William T. Pecora, the motivating force behind the establishment of Earth Resource Sensing from outer space. The William T. Pecora Award will be presented annually in recognition of the outstanding contributions of individuals or groups toward the understanding of the earth by means of remote sensing.

Dr. Pecora, former Director of the U.S. Geological Survey, and later, Under Secretary of the Department of the Interior, was a Government leader with broad vision who had a deep appreciation of the use of satellite system programs in continually inventorying and managing our natural resources more effectively.

Federal agencies, private individuals, scientific institutions, professional societies, and industrial organizations were invited to submit nominations of individuals or groups who have made major contributions to the art or science of earth resource sensing.

The first Pecora Award was presented to William A. Fischer on July 12, 1974, by Secretary of the Interior Rogers C.B. Morton and NASA Administrator Dr. James C. Fletcher at a special ceremony at U.S. Geological Survey headquarters in Reston, Va. Mr. Fischer, a geologist at the Geological Survey, was recognized "for his contribution to the betterment of mankind through enlargement of man's knowledge of his own environment by utilization of remote sensing."

—Joe Nordsieck



Testing a New Approach to Job Evaluation

by HAROLD SUSKIN

MR. SUSKIN was Chief, Test and Implementation Group, U.S. Civil Service Commission, until his retirement in June of this year.

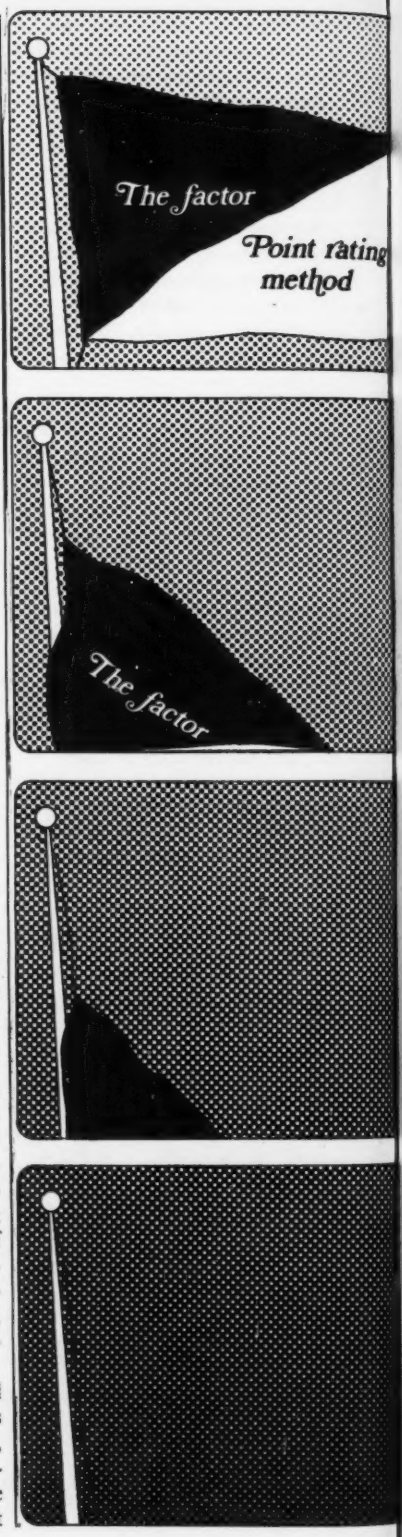
POSITION CLASSIFICATION in the public service has been notable for its durability, essentiality, and unpopularity. Originally conceived as a reform measure, it has been viewed by some as more of a barrier than a boon to sound management. Much of the dissatisfaction with position classification appears to result from misunderstanding. It has been difficult to explain classification judgments to supervisors, employees, and their representatives.

A major effort has been underway in the Federal Government to develop and test a new approach to job evaluation. With the dubious title of "The Factor Ranking/Benchmark Method," one would expect further obfuscation of what is already a confusing business. Actually, the new method is designed to make the job evaluation process more understandable. At the same time, it is hoped that the new approach will improve the accuracy and consistency of classification judgments.

By whatever name we refer to this rose—"Factor ranking/benchmark method," the term used throughout the testing phase, or as a "factor/point rating method," a term that perhaps more closely describes the technique—the question arises: Is this another term for an old concept, or has something new been created in the personnel business?

The wheel has not been reinvented. Our approach is an adaptation of several well-accepted techniques of job evaluation. It is unique in the sense that established methods are interwoven to produce a comprehensive yardstick to measure the relative value of positions. This new approach combines such traditional job evaluation methods as whole job ranking, point rating, and factor comparison.

The new process was not created in a vacuum. Substantial numbers of Federal employees, managers, and personnel specialists were involved in its design and the nationwide feasibility test that



followed. They participated willingly and effectively.

Background

Development and testing of a factor/point rating model is an outgrowth of P.L. 91-216, the Job Evaluation Policy Act of 1970. That law required a 2-year study leading to ". . .a comprehensive plan for the establishment of a coordinated system of job evaluation and ranking for civilian positions in the executive branch." The factor/point rating technique was developed during the course of that study. The approach was designed to provide an equitable alignment of positions; consistency in classification decisions; and understanding by managers, employees, and their representatives of the basis for these decisions.

Since March 20, 1972, the Civil Service Commission has been heavily involved in designing and testing this job evaluation method. A Test and Implementation Group (TIG) was formed in the Standards Division, Bureau of Policies and Standards, to develop the basic methodology, conduct a feasibility test, and evaluate test results. The TIG effort applies to approximately 1 million Federal nonsupervisory positions in grades 1 through 15 of the General Schedule.

The factor/point rating approach was designed, and if successful would be implemented, within existing legislation. Grade-level concepts set forth in chapter 51, title 5, of the U.S. Code are being retained. Actually we are talking about a new way of issuing grade-level criteria in CSC standards. Narrative descriptions of grade levels would be replaced by *Guide Position Descriptions*. The occupational information now contained in standards would be continued, as would the qualification requirements. A guide position description would contain a statement of major duties; information about each factor and subfactor; and appropriate point values for each factor and subfactor.

The TIG project is a cooperative venture. The Classification and Pay Committee of the Federal Interagency Advisory Group (IAG Committee No. 269) has participated actively at each stage of the project. Eleven members of the Committee have worked with the TIG staff in developing many of the basic steps. The full Committee has provided advice and counsel, and has approved all important methods and procedures.

In addition, representatives of several independent unions and professional associations have worked with the TIG staff in the design stage, and in developing field test procedures. The cooperation received from representatives of Federal agencies, unions, and professional organizations has assured a high level of realism and considerable support for the TIG project.

Basic Methodology

The first step in designing the new methodology was the selection of factors. Job evaluation factors are yardsticks used to measure the worth of positions in relation to one another. The following factors were selected as most appropriate for the full range of General Schedule positions:

- *Knowledge required by the job.* This factor measures the nature and extent of skills, knowledge, and abilities needed to perform the work.
- *Responsibility.* This factor measures supervisory controls and the existence of guidelines.
- *Difficulty.* This factor measures the complexity, scope, and effect of the work.
- *Personal relationships.* This factor measures the nature and purpose of relationships with other persons.
- *Environmental demands.* This factor measures the type and amount of physical effort required and the demands imposed by environmental conditions.

The second major step in designing the new approach was selection of a sample of positions to represent the 1.3 million Federal General Schedule positions. This was a critical step since the entire methodology was to be designed around the sample. It required selection of a cross section of common jobs with large numbers of employees representing the full range of skill levels.

A total of 147 positions occupied by approximately 450,000 employees were selected for system design purposes. These positions exist in almost every Federal agency—secretary, clerk-typist, computer programmer, engineering technician, management analyst, auditor, civil engineer, attorney.

Federal agencies prepared descriptions of the 147 jobs in a new format. These documents describe the major duties briefly, and provide specific information about each factor. The 147 key position descriptions cover real, live jobs actually performed by one or more employees.

The next step in the design stage was the ranking of the 147 key jobs. The ranking by whole job is one of the most significant parts of the entire developmental process. This procedure gives us the basic alignment of positions. The job evaluation methodology is successful to the extent that it retains this basic alignment. In other words, the job evaluation system is designed to provide a means for assuring the same alignment or relationship among positions as provided by the whole job ranking process.

Ordinarily, job analysts or position classifiers accomplish the basic job rankings. It was decided, however, to take a fresh look at job relationships under the General Schedule. Panels of experienced Federal managers and representatives of unions and professional associations ranked the 147 key jobs. Their judgments provide the peg points for the new job evaluation methodology.

Panels of managers and employee representatives also ranked the 147 key positions by each of the five factors listed earlier. This process provided an alignment

of the 147 jobs by factor; the alignment provided raw data for the development of guide charts. The top jobs for a factor represent the highest level or degree of the factor, with successive groups of jobs representing lower degrees.

A guide chart contains narrative descriptions of each degree of a factor, with appropriate point values, thus representing a "standard for standards," i.e., individual guide position descriptions are point-rated by reference to the guide charts. The guide position descriptions with points for each factor become the classification standard. New positions are classified by comparison with guide position descriptions.

Federal agencies developed approximately 350 key position descriptions. These included the 147 Government-wide jobs, plus descriptions of about 200 additional jobs. It was possible to point-rate 275 of these jobs by use of the guide charts. It was also necessary to develop a conversion table, containing the point range for each General Schedule grade 1-15.

Now the basic tools needed to test the factor/point rating method were completed. These tools consisted of guide charts for the factors; 275 position descriptions with point values; and a table converting points to GS grades.

Field Test Overview

The factor/point rating method represents a major change in the Federal Government's approach to issuing classification standards for General Schedule positions. We cannot go into this type of change without every assurance that the new system will represent an improvement.

Hence a decision was made to conduct an extensive test of the new methodology in a setting as close as possible to an actual operating situation. To help achieve that goal, test objectives and procedures were developed with the close cooperation of Federal position classifiers and representatives of independent unions and professional organizations.

Several criteria were established against which test results could be measured. Specifically, it was decided that the new system must:

- ☐ Provide accurate grade-level determinations.
- ☐ Provide consistency in grade-level decisions.
- ☐ Be acceptable to employees, managers, and personnel specialists.
- ☐ Be feasible from an administrative standpoint.

Field test of the factor/point rating approach was based on a sample of 3,844 positions in 26 Federal agencies at 256 installations located throughout the United States. To be selected, it was necessary that an installation have jobs in the appropriate occupational categories; have at least one experienced, well-qualified position classifier; and be willing to devote the resources required by the field test. The selection of installations was made by CSC regional offices after receiving recommendations from many agency headquarters.

Of critical importance was choosing a proper sample of Federal positions for test purposes. A broad spectrum of positions was selected, representing the most typical occupations and grade levels found throughout the United States. Each CSC regional office was assigned a number of positions and specific occupations on the basis of the mix of jobs in that region. Initially this sample amounted to almost 5,000 jobs, with a final selection of 3,844 positions.

Field Test Procedures

Achieving an acceptable degree of validity in the test process meant that it was essential for common procedures to be utilized at the 256 participating field installations. In order to train participating position classifiers for the test, they were brought together in 16 major centers of Federal employment throughout the country.

A full day was devoted to discussing specific test procedures and the techniques of evaluating positions using the factor/point rating approach. The case method was utilized, providing on opportunity for participants to evaluate several positions on a practice basis.

At the conclusion of this 1-day training program, participants returned to their installations to begin a process that we hoped would tell us whether we were on the threshold of a major improvement in Federal personnel administration. During the day-long training program every effort was made to convey this sense of importance. It was not a particularly difficult task since the Federal classification community has displayed a high level of interest in the TIG project from its inception.

Procedures for testing the factor/point rating method called for a joint effort by management officials, immediate supervisors, employees, and position classifiers at each participating installation. Following is a brief description of the major steps involved in the field test:

- ☐ *Sample selection.* This step called for the selection of positions covered by guide position descriptions in assigned occupational areas. These were to be properly classified positions occupied by incumbents familiar with the full range of duties. Obviously a properly classified position was needed to serve as a valid base, and only an experienced incumbent could describe the total job accurately.
- ☐ *Desk audit.* A thorough desk audit was required. This process would provide the detailed information on job content needed to check the accuracy of the existing grade level and to evaluate the position under the new methodology.
- ☐ *New position descriptions.* It is axiomatic that a job evaluation judgment is no more accurate than the information upon which it is based. Primary source of this information is the official position description. To assure data needed

about each factor, and an orderly grouping of that data, the new position description format previously mentioned was used in testing the factor/point rating methodology. This format begins with a statement of the major duties and is followed by a section setting forth characteristics of the position in terms of each of the five job evaluation factors.

☐ *Evaluation process.* The factor/point rating method of job evaluation calls for a comparison of the position to be classified with a guide position description. The latter has been point-rated by reference to guide charts. Since a relatively small number of guide position descriptions were available, classifiers participating in the test were instructed to evaluate positions by one of four methods: complete application of one guide position description; use of two or more guide position descriptions; a combination of one or more guide position descriptions and guide charts; and use of guide charts only.

☐ *Position data summary sheet.* A special-purpose document (position data summary sheet) was designed to record basic data about the evaluation of each test position. This form provided background information concerning the location and current classification of the position, as well as full data on how the position was classified under the new methodology and on the length of time required to perform the evaluation. The form called for specific point values for each factor, with the basis for the assignment of point values—guide position description(s) and/or guide chart(s). The position data summary sheet contained all the information required to determine the degrees of accuracy and consistency achieved under the new job evaluation methodology. By designing this form for computer application, a very rapid processing of test results was assured.

☐ *Explanation to employees and supervisors.* As indicated above, one of the primary objectives of the field

Table 1
Responses of employees, supervisors, and position classifiers to common questions 1–3
(in percent)

Question	Responses of employees			Responses of supervisors			Responses of position classifiers		
	Agree	Disagree	Other	Agree	Disagree	Other	Agree	Disagree	Other
1. Understandability (new method more understandable)	78	5	17	67	8	25	74	10	16
2. Ease of describing job (new method will make it easier)	69	10	21	75	8	17	69	15	16
3. Reasonableness (new method a reasonable way to evaluate jobs)	73	4	23	78	3	19	89	2	9

Table 2
Responses to questions 4 and 5, employee questionnaires
(in percent)

Question	Agree	Disagree	Other
4. Easier to compare with other jobs	72	6	22
5. Easier to grade new position	67	5	28

Table 3
Responses to supervisor questionnaires
(in percent)

Question	Substance of question	Agree	Disagree	Other
	3 most favorable responses			
Q. 13	Reasonable way of grading job	78	3	19
Q. 2	Easier to describe positions	75	8	17
Q. 4	Easier to explain basis for grade of job	75	7	18
	3 least favorable responses			
Q. 9	Will reduce number of classification appeals	38	13	49
Q. 12	Employees will accept grade more readily	45	13	42
Q. 7	Easier to restructure jobs for upward mobility	55	9	36

Table 4
Responses to position classifier questionnaires
(in percent)

Question	Substance of question	Agree	Disagree	Other
	3 most favorable responses			
Q. 13	Reasonable way of grading jobs	89	2	9
Q. 21	Easier to compare jobs across occupational lines	81	6	13
Q. 22	Easier to compare jobs across organizational lines	79	6	15
	3 least favorable responses			
Q. 8	Will reduce number of classification appeals	13	33	54
Q. 15	Easy to convert from present to new system	34	36	30
Q. 23	Will simplify classification recordkeeping	34	23	43

test was to determine the degree of acceptance of the new methodology by employees, managers, and personnel specialists. A technically ideal job evaluation plan will fail if it is not understandable and acceptable to employees and managers.

A major phase of the test involved a survey of the attitudes of employees, supervisors, and position classifiers toward the factor/point rating method. For this purpose each employee and supervisor received a full explanation of how the employee's job is classified under the current approach, and how the position would be classified under the new method.

To improve objectivity, participants were told to assume that a position properly classified under the existing methodology would be evaluated to the same grade under the new approach. Actually, the table converting point values to grade levels was not provided in order to avoid any tendency to judge the factor/point rating method on the basis of its effect on grade levels.

It must be recognized that the new approach is not expected to change grade levels significantly, rather its purpose is to provide a method of job evaluation that will be better understood and accepted, with greater consistency and economy, than existing methods.

☐ *Completion of attitude survey questionnaires.* At the conclusion of the explanations mentioned above, each employee and supervisor was asked to complete a questionnaire. This document was designed to obtain opinions on understandability, acceptability, and reasonableness of the new approach. Completion of questionnaires was optional. Each participating position classifier was also requested to complete an attitude-type questionnaire on an optional basis. Position classifiers were asked to express opinions on such matters as understandability, acceptability, and technical results of the new approach.

☐ *Post-test review.* The final step in the test procedure involved a post-audit of agency evaluations by representatives of the U.S. Civil Service Commission. Instructions called for selection of a 10 percent random sample as a basis for the post-test review. The following steps were taken with respect to each position reviewed: A new desk audit was conducted; the existing grade level was checked for accuracy; the new factor-format position description was reviewed for accuracy and completeness; the position was reevaluated using the new method; and a new position data summary sheet was completed, documenting the evaluation process.

Field Test Results

The sample of 3,844 positions is considered a very adequate sample in terms of size. These positions represent all the major white-collar occupations and are located throughout the United States. Employees, supervisors, and classifiers cooperated wholeheartedly in all phases of the test. Results of the field test are summarized below.

☐ *Attitude survey.* Questionnaires were completed by 3,636 employees, 2,626 supervisors, and 630 position classifiers. Attitudes were highly favorable, with the highest degree of acceptance of the new approach by employees. Significantly, employees in grades GS-1 through GS-5 were the most favorably disposed toward the new approach. The three questionnaires contained similar items in the areas of understandability, ease of describing jobs, and reasonableness of the new method. Table 1 compares responses to those questions.

While the attitude survey was generally very favorable, reservations were expressed about certain aspects of the factor/point rating approach. Tables 2, 3, and 4 provide additional data on questionnaire responses. The employee questionnaire contained only five questions, three of which are covered by table 1. The responses to questions 4 and 5 are shown in table 2. With respect to the questionnaires used for supervisors and position classifiers, the three most favorable and three least favorable responses are shown.

☐ *Agency evaluations.* The purpose of agency evaluations was to determine how close a relationship would occur between actual and test grade levels; determine how and to what extent the tools of the new method needed to be adjusted; and provide sufficient experience with the new approach so that employees, supervisors, and position classifiers could express informed opinions on the methodology. The data resulting from agency evaluations are contained in table 5. These data were analyzed occupation by occupation in order to determine why differences occurred between current grade and test levels, and what measures are required to eliminate causes of the differences.

Three basic reasons account for the differences between current grade levels and levels arrived at during the test. The most significant reason involved the absence of specific guide position descriptions for many of the jobs evaluated during the test. As table 5 indicates, by far the best results are obtained when a position is matched with a single guide description. The agency evaluations provide a clear message—a complete range of guide position descriptions covering all grades, specializations, and typical work assignments will be required for successful use of the factor/point rating approach.

It also may be necessary to provide additional job evaluation assistance in the form of series guide charts. They would set forth degrees of each factor for a particular occupational series of positions—for example, voucher examiner, mechanical engineer, budget analyst.

Insufficient training and experience in the application of the methodology also accounted for differences between actual and test grade levels. This was an inevitable circumstance since a new technique was being tested. The solution to this problem is relatively

simple—an intensive training program must be completed by all position classifiers before they apply the proposed new methodology.

The third reason for deviations from current grade levels can be categorized as human frailty. This includes failure to follow instructions; lack of attention to pertinent details; misunderstanding of the basic methodology; pro forma participation in the field test; experimentation beyond the limits of the test; and clerical errors. These problems can be alleviated by training and appropriate administrative controls.

□ *Post-test review.* Purpose of the post-test review was to determine the reliability of the new approach—whether two different classifiers on two separate occasions would arrive at the same test grade for the same job. This review was accomplished by CSC regional and central office personnel on the basis of a 10 percent sample. In some cases, agency headquarters representatives participated.

A total of 404 agency jobs were reviewed to appraise the accuracy of existing grade levels; to determine the accuracy and completeness of the new factor-format position descriptions; and to make an independent evaluation of the position under the new methodology.

The post-test review process gave us data on the accuracy of evaluations made by agency position classifiers, and provided a second judgment concerning the grade level of the position under the new technique. By obtaining two judgments it was possible to arrive at a measure of consistency in grade levels provided by the factor/point rating model.

The post-test review data indicate a high degree of consistency between evaluations made by agency and CSC position classifiers. The highest degree of consistency was found with respect to positions evaluated by using a single guide position description, with the lowest consistency resulting from cases evaluated solely on the basis of guide charts.

Table 5
Comparison between test grades and current grades

Case grouping	Cases in which test grade equals current grade using different conversion charts				
	Total cases	Conversion chart used			
		Alternate 1	Alt 2	Alt 3	Alt 4
Group 1					
Complete match to one guide position description	1462	1074	1100	1092	1060
		73%	75%	75%	72%
Group 2					
Mixed match—2 or more guide position descriptions	427	210	205	208	201
		49%	48%	49%	47%
Group 3					
Guide position description(s) and guide charts	1749	1008	981	1002	1005
		58%	56%	57%	57%
Group 4					
Guide charts only	206	83	83	88	89
		40%	40%	43%	43%
Totals	3844	2375	2370	2390	2348
		62%	62%	62%	61%

Note: Alternates 1–4 designate the four different conversion charts used in the test. In developing a job evaluation system that utilizes point values, it is typically necessary to experiment with various combinations of point ranges until the one producing the most valid results is determined.

Table 6
Results of post-test review

Case group by post-test reviewers	Total cases	Test grade same as post-test grade	Test grade same as current grade	Post-test grade same as current grade	Test grade and post-test grade same as current grade
Group 1					
Complete match to one guide position description	153	137	120	123	115
		90%	78%	80%	75%
Group 2					
Mixed match—2 or more guide position descriptions	46	36	24	22	20
		78%	52%	48%	43%
Group 3					
Guide position description(s) and guide charts	156	114	84	87	68
		73%	54%	56%	44%
Group 4					
Guide charts only	14	11	6	5	5
		79%	43%	36%	36%
Totals	369	298	234	237	208
		81%	63%	64%	56%

Table 6 contains the results of the post-test review. Of the 404 cases selected for post-audit, 31 were dropped because the new positon description was either inaccurate, incomplete, or both. Four cases also were eliminated due to faulty positon data summary sheets. Hence, the post-test review data summarized in table 6 are based on 369 cases.

Significance of Field Test Results

☐ *Opinions of employees and supervisors.* Field test results indicate that employees and supervisors prefer a factor/point rating method to the existing Federal position classification approach. There is a consensus that it is easier for employees and supervisors to understand the basis for grade-level decisions under the factor/point rating technique. They consider this to be a reasonable way of grading jobs, and an easier way to explain how a job is evaluated. Employees at grades GS-1 through GS-5 express the highest degree of support for the new methodology.

☐ *Opinions of classifiers.* Position classifiers as a group are also supportive of the factor/point rating approach. As indicated by table 4, the great majority of position classifiers who completed the questionnaire consider the new method a reasonable way of grading jobs. A very high percentage of the position classifiers also believe it will be easier to compare jobs across occupational and organizational lines. These types of alignment are among the primary objectives of a job evaluation plan.

It should be noted that position classifiers were quite realistic in evaluating the new methodology, and they do not view it as a solution to every classification problem. For example, position classifiers do not believe the new method will reduce the number of classification appeals, nor cause employees to accept grades more readily. They also recognize that it will not be an easy matter to convert from the present narrative classification standards method of job evaluation to the factor/point rating method.

☐ *Evaluations by position classifiers.* The results of evaluation decisions made by classifiers at the local installation level were particularly significant. This phase of the test was least satisfactory and most educational. As indicated in table 5, correlations between current and new grade levels ranged from 72 to 75 percent when a single guide position description was used as a standard.

The results indicate that guide charts alone do not serve as a satisfactory basis for classifying individual positions. Presumably they are much too general to provide the specific criteria required to evaluate an individual position accurately. A combination of guide position descriptions and guide charts also did not produce acceptable results.

The test also points to the need for an extensive training program for position classifiers and personnel generalists responsible for making classification decisions. Throughout the test errors were made in the selection and application of guide position descriptions and in the assignment of point values. These misunderstandings can be corrected through proper training.

☐ *Results of post-test review.* The post-test review provided further verification of the need for guide position descriptions as standards in the evaluation of individual jobs. When a single guide position description was used, the correlation between agency and CSC position classifiers was 90 percent. When guide charts only were used, the correlation was reduced to 79 percent.

Conclusions

There are several major conclusions resulting from the field test of the factor/point rating method. These can be summarized as follows:

☐ Employees and supervisors are highly favorable toward the factor/point rating approach. They prefer the proposed technique that measures jobs through several factors, and quantifies the judgment made with respect to each factor, to the current whole job approach.

☐ Position classifiers indicate that the factor/point rating method would have several advantages over the current approach. They do not view it as a panacea for all classification problems, however.

☐ The new approach provides satisfactory results when applicable guide position descriptions are available. Guide charts are too general to serve as standards for the evaluation of individual jobs. As indicated above, occupational series guide charts may be a valuable supplement to guide position descriptions.

☐ An extensive training effort is required to implement a factor/point rating approach. Position classifiers must receive in-depth training in how to use the new tools. Employees, supervisors, and managers must all receive thorough orientation in order to understand the new approach.

☐ A long-term implementation period would be required if a decision is made to adopt factor/point rating. Since guide position descriptions are essential to satisfactory results, a major standards production effort is involved. This would require intensive occupational studies to produce substantial numbers of high-quality guide position descriptions. Agencies would be expected to apply standards on an occupation-by-occupation basis as they are issued.

☐ The role of the position classifier will remain of paramount importance in classifying positions under the factor/point rating approach. The classifier will be responsible for reviewing standards to assure complete coverage of guide position descriptions; providing additional guide descriptions if gaps are noted during the standards review process; applying the guide position descriptions properly during the evaluation process; explaining the methodology to employees, supervisors, and managers; and maintaining a continuing review of the

new methodology to recommend improvements, as necessary.

A Final Word

As of this writing, a firm and final decision has not been made on whether to adopt the factor/point rating method of job evaluation. The test findings are generally favorable. The U.S. Civil Service Commissioners have been briefed on the methodology and test results. They are sufficiently in favor of this method to have authorized consultation with agencies, unions, and professional associations. The final decision to "go" or "no go" must be based on a thorough analysis of the implications of test results; the comments and recommendations received during the consultations mentioned above; and a weighing of anticipated benefits versus costs involved.

It must be recognized that a change in job evaluation methodology affecting most of the 1.3 million Federal employees paid under the General Schedule is a monumental undertaking. It must be meticulously planned, carefully explained to all concerned, and implemented with the utmost consideration of its effect on employees.

The months ahead will tell us whether the Federal Government is ready to adopt the factor/point rating method of job evaluation. Come what may, the forces of reform are on the move, and inevitably will lead to improvements in the Federal position classification plan.

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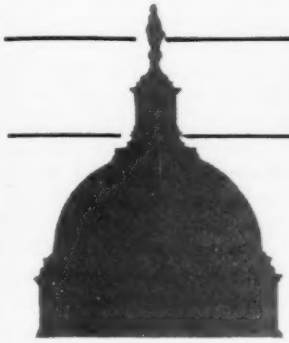

a LOOK at LEGISLATION

Personnel legislation enacted, beginning the second session, 93d Congress—January 21, 1974, to May 31, 1974.

Administration

Public Law 93-275, approved May 7, 1974, creates through reorganization of certain agencies and functions of the executive branch, an independent Federal Energy Administration.

Section 4 creates 19 positions, compensation for which is to be at Executive Level rates. Nine of the positions are to be filled by the President, with advice and consent of the Senate, and ten filled by the Administrator of the Federal Energy Administration.

Section 7 provides for 91 positions in the agency to be placed in GS-16, 17, and 18, in addition to those now prescribed under existing law, and limits the total number of such positions in the agency to 105.

Section 28 provides for reemployment rights for Federal employees who transfer to positions in the agency.

Health

Public Law 93-246, approved January 31, 1974, provides for increasing the Government's contribution to the cost of health benefits for Federal employees to 50 percent of the average high option of the various participating plans effective January 1974, and to 60 percent the first day of the first pay period beginning on or after January 1, 1975; allows pre-1960 retirees under the Retired Federal Employees Health Benefits program the option of changing to the Federal Employees Health Benefits program; and requires carriers participating in this program to agree to comply with Commission decisions in health benefits claims disputes.

Public Law 93-282, approved May 14, 1974, Comprehensive Alcohol Abuse and Alcohol Prevention, Treatment, and Rehabilitation Act Amendments, extends and expands the National Institute of Alcohol Abuse and Alcoholism. Section 401 gives the Director of NIAAA the authority to place 11 positions in GS-16, 17, and 18.

Pay

Public Law 93-259, approved April 8, 1974, amends the Fair Labor Standards Act to raise the minimum wage and to extend its coverage to most employees of the Federal Government, the United States Postal Service, Postal Rate Commission, and to State

employees other than elected officials and their staffs. The Civil Service Commission is authorized to administer the provisions of the Act with respect to Federal employees other than employees of the Library of Congress, Tennessee Valley Authority, United States Postal Service, or Postal Rate Commission.

Section 28 provides that all personnel actions affecting employees or applicants for employment in the Federal service shall be made without discrimination based on age. The Civil Service Commission is authorized to enforce the provisions of this section and to issue such rules, regulations, orders, and instructions as are necessary.

Public Law 93-274, approved May 6, 1974, amends title 37, United States Code, to revise the special pay structure relating to medical officers of the uniformed services. Temporary authority (to June 30, 1976) is provided to grant increases on a graduated basis up to $13,500 to physicians in either the armed services or the Commissioned Corps of the United States Public Health Service.

Political Activity

Public Law 93-268, approved April 17, 1974, amends Public Law 93-198 (D.C. Self-Government Act) to permit political participation of Federal and District of Columbia employees as candidates in the first primary and general election held under that Act.

Section 4 requires a Federal or District of Columbia employee winning election as Mayor or Council member to resign from his position since the law requires that the Mayor or Council members hold no other paid public office.

Retirement

Public Law 93-260, approved April 9, 1974, reduces the marriage requirement for entitlement to survivor annuity under the Civil Service Retirement System from 2 years immediately prior to death to 1 year. This applies on a prospective basis only.

Section 2 permits a Congressional Member to use his high-3 years' average salary instead of his final salary in determining the 80-percent limitation on a Member's annuity.

Public Law 93-273, approved April 26, 1974, establishes a minimum monthly rate for a civil service retirement annuity equal to the social security minimum primary insurance amount. The minimum annuity would change to reflect future changes in social security.

Section 2 grants a $240 annual increase in any annuity of a former employee or Congressional Member based on a separation occurring prior to October 20, 1969, and a $132 annual increase to a survivor (except a surviving child).

—Dorothy J. Mayo

CSC CHECKLIST

A selection of recent CSC issuances that will be of interest to agency management:

☐ FPM Letter 213-14, Pay Rates for Summer Aids and Stay-in-School Appointees:

—Increases the minimum wage rate for summer aids and stay-in-school appointees to $2 an hour and eliminates the requirement that the Federal Government pay these employees at State or local minimums if they exceed the Federal minimum.

☐ FPM Letter 532-62, Additional Environmental Differential Categories:

—Authorizes hazard pay for employees working with missile liquid or solid propulsion agents under certain conditions that could result in fires or explosions.

☐ FPM Letter 551-1, Interim Instructions for Implementing the Fair Labor Standards Act:

—Discusses the impact of 1974 amendments to the Fair Labor Standards Act on Federal employees who, as a group, were blanketed under the coverage of the Act by Public Law 93-259. In particular, points out the difference between employees who are exempt from the minimum pay and overtime provisions of the Act and those who are not, and management's responsibility for insuring that only authorized overtime work is performed by nonexempt employees.

☐ FPM Letter 831-35, Civil Service Retirement—Amendment of the Civil Service Retirement Law:

—Assures a minimum monthly annuity to Federal retirees equal to the lowest monthly "primary insurance amount" paid under social security retirement.

☐ FPM Letter 930-12, Programs for Specific Positions and Examinations (Miscellaneous); Revision to the U.S. Government Motor Vehicle Operator's Program:

—Waives the road test requirement for Government motor vehicle operator's licenses under specified conditions for employees who have current State, D.C., or Puerto Rican driver's licenses.

☐ Personnel Management Series Pamphlet No. 25, Guidelines for Federal Women's Program Coordinators:

—Discusses the role of FWP Coordinators in assuring equal employment opportunity for women in the Federal Government.

☐ Personnel Management Series Pamphlet No. 26, Upward Mobility Through Job Restructuring:

—Describes the ways that agencies can utilize job restructuring to help employees in dead end jobs move up the career ladder to more satisfying, better paying work.

—Mary-Helen Emmons

Fair Labor Standards and the Public Sector

by DWIGHT W. BROWN
Bureau of Policies and Standards
U.S. Civil Service Commission

YOU HAD HEARD about it, maybe you were affected by it during a period of private employment, but you never had to live by its provisions in government before. Now you do. And if you're a government manager, you'd better know about the Fair Labor Standards Act because some new Amendments to the Act affect the way you do things. More important, they affect what you ask *others* to do . . . and *when* . . . and for *what kind* of compensation.

For starters, the Fair Labor Standards Amendments of 1974 (P.L. 93-259) were signed into law by the President on April 8, 1974. They became effective May 1 and extended the coverage of the Fair Labor Standards Act to include employers and employees in the public sector. The Amendments also authorize the Civil Service Commission to administer the Act with respect to Federal employees.

State and local governments also came under the umbrella of FLSA coverage, as did the U.S. Postal Service and the Postal Rate Commission. The Department of Labor will administer the Act for these public agencies.

This is not a new role for the Department of Labor. It has been administering the Fair Labor Standards Act for 36 years now, but only for the private sector, where the Act's provisions for minimum wages, overtime compensation, and prohibitions on child labor are well known.

When the FLSA became law in 1938, its purpose was to protect employees from potential abuses by their employers. Congress did not intend for the Act to apply to management personnel, but rather to nonsupervisory personnel. The Act, itself, includes a number of exemptions (those *not* covered) based upon either the nature and size of the employing establishment or the nature of the work activity of the employees.

Executive, Administrative, and Professional Exemption

One such exemption pertains to employees in bona fide executive,

Mobility, it has two major areas of interest.

One is to monitor and publicize the IPA mobility program. This program allows for the exchange of employees between the Federal Government and State and local governments or institutions of higher education. The mobility feature of IPA provides an easy way to move needed expertise back and forth between Federal agencies and States, local governments, and institutions of higher education. This program has just completed its third full year of operation. Each year the number of individuals and agencies participating has increased.

The total number of mobility assignments, as of June 30, 1974, approached 1,500. Approximately 60 percent of these assignments represent Federal employees going to work in State and local governments or in a college or university. Participating Federal Government agencies have the discretion of paying all or a portion of the assignee's salary expenses. To date, Federal agencies have absorbed over 70 percent of the salary expenses of all participants.

A key program priority in Fiscal Year 1975 will be to increase the number of State and local officials, especially those in core management positions, coming into the Federal Government on mobility assignments. Assignments can be for up to 2 years in length, with the possibility of an additional 2-year extension, or can be for relatively short periods of time. The average mobility assignment has been for a 13-month period.

The new Office of Faculty Fellows and Personnel Mobility is implementing some procedural changes to improve mobility program administrative processes.

A new monitoring system to "track" mobility requests is being installed. This system will establish new procedures for regional offices and headquarters staff in responding to mobility requests. State and local governments and universities seeking a mobility assignee from a Federal agency will be able to know where their request is being reviewed. The system also will allow a Federal agency to undertake a more thorough review and analysis of its ability to fulfill the mobility request. It is expected that the new system will bring about a better match between requests and responses.

To improve the flow of information between Commission offices in Washington and the 10 regional offices, a new routing system for mobility agreements also has been installed. Mobility agreements will be routed to the appropriate regional offices, thereby keeping them better informed.

Also, increased emphasis will be given to the IPA mobility program as a means for strengthening core management skills and for building management capacity throughout the Federal system.

The second principal assignment of this new office is to work with the academic community and Federal agencies to promote and foster the concept of faculty work assignments in executive agencies. This new program effort is known as the Government Affairs Faculty Fellowship Program.

This program seeks to involve a broad range of university interests and disciplines. The office is a focal point for coordinating, but not replacing, existing fellowship programs, such as those being run by the American Assembly of Collegiate Schools of Business (AACSB) and the National Association of Schools of Public Affairs and Administration (NASPAA).

During the 1974-75 program year, both AACSB and NASPAA achieved new yearly highs in placement of Fellows. To date, approximately 175 Fellows have been placed under both of these programs.

Mobility provisions of the Intergovernmental Personnel Act are used to facilitate the assignment of Government Affairs Faculty Fellows. Most assignments are for 1 year, either in Washington or the field. Final placement of the Fellows is negotiated between participating organizations and individuals.

During the first year, USCSC staff will encourage Federal agencies to identify potential job assignments for faculty members and to make sure that these jobs are structured in a way that will best utilize the talents and skills of participating faculty, and benefit the public service. The Government Affairs Faculty Fellowship Program will work with the appropriate professional associations and groups for the recruitment of appropriate faculty members for placement.

At first this program will emphasize the use of university personnel in the Federal Government. Also, the new office is going to encourage placement of Fellows not only in the central offices of agencies, but in the regional offices as well. Eventually it is hoped that appropriate Federal officials will have an opportunity to be placed with colleges and universities for teaching or research assignments.

The Office of Faculty Fellows and Personnel Mobility is one part of the Commission's effort to create a more systematic, institutionalized framework for CSC-university relations. This new office will be exploring a variety of ways and means to achieve and maintain effective working relationships.

For additional information about this office, call or write Andrew Boesel, Director, Office of Faculty Fellows and Personnel Mobility, 1900 E St. NW., Room 2A03, Washington, D.C. 20415, telephone number (202) 254-7316.

—Lea Guarraia

WORTH NOTING (CONT.)

The study showed that in private industry an executive working at the level of a GS-16 civil servant is receiving an average salary of $45,146 per year; at GS-17, $56,011; at GS-18, $71,076. These salaries are well above the current $36,000 limit applied to all Federal positions at the GS-16 though 18 levels.

The CSC Executive Pay Study was designed to approximate the industrial coverage of the Bureau of Labor Statistics' annual salary survey of professional, administrative, technical, and clerical occupations equivalent to the GS-1 through 15 levels in Government. The following industrial categories were represented in the study: manufacturing; transportation and public utilities; wholesale trade; retail trade; finance, insurance, and real estate; and services. A total of 144 companies, ranging from some of the larger firms in America to those employing as few as 500 persons, were visited.

The Commission was assisted in the design and conduct of the executive pay study by the American Compensation Association, American Management Association, and the Conference Board.

The findings indicate that Government salaries trail private sector salaries by 27 percent at the GS-16 level, 55.6 percent at the GS-17 level, and 97.4 percent at the GS-18 level.

☐ JURISDICTION. The Civil Service Commissioners have adopted an Administrative Law Judge's recommendation that the Commission does have authority to initiate disciplinary action against employees of other agencies who are found to have violated civil service laws, rules, or regulations. The question arose after the Commission's Executive Director charged 8 persons in another agency with violations in the operation of a special referral system. Instead of responding to the merits of the charges, those charged filed motions to dismiss, primarily on the contention that the power to initiate such proceedings lies exclusively with the employing agency. With the matter of jurisdiction resolved, the cases may now be considered on their merits.

☐ FELLOWSHIPS for public management. The Civil Service Commission announced the names of 80 Federal employees selected as participants in the Education for Public Management program for the 1974-75 academic year.

Those selected from 19 Federal departments and agencies are men and women who are expected to become managers of Government programs and policies. Their year of study is aimed at better understanding of how to identify and achieve organizational goals, and how to mobilize and allocate resources and evaluate results.

The participants are in grades GS-11 to 15. Each participant will return to the sponsoring organization at the end of the 1974-75 academic year to resume a Government career in a carefully planned assignment that will utilize newly acquired and enhanced skills and knowledge.

At each of nine participating universities, the participants attend a core seminar that deals with policy, politics, and administration in modern government. In addition, each participant takes courses in those areas related to management, agency mission, and public policy.

They are to study at Cornell University, Harvard University, Indiana University, Massachusetts Institute of Technology, Princeton University, Stanford University, University of Southern California, University of Virginia, and the University of Washington.

☐ IMPROVED MANAGEMENT. New initiatives have been launched to improve the selection, development, and motivation of career Federal managers. Some elements will be achieved administratively while others will require legislation. Highlights are:

1. Selection. While technical competence will remain a factor in filling executive positions with leadership responsibilities, demonstrated managerial capability will be weighed more heavily by the Civil Service Commission.

2. Development. Through a move to larger and more permanent quarters on the campus of the University of Virginia, the capacity of the Federal Executive Institute will be doubled.

3. Administration. Legislation to create a new Executive Personnel System has been requested. This system would help to resolve such problems as fragmentation of laws and rules applicable to supergrade positions and the need for improved selection procedures.

4. Remuneration. Congress has been asked to approve a prior request for adjustment of Executive Level salaries, which in turn would alleviate pay compression for executives at senior civil service levels.

5. Incentives. New and original efforts will be made to reward outstanding performance by managers.

☐ NEW EEO DIRECTOR. The Commission has named Anthony W. Hudson, 37, as Director of the Federal Equal Employment Opportunity program. A former Director of Personnel and Labor Relations in the Commission, he is a winner of the William A. Jump Award, a nominee for the Arthur S. Flemming Award, and has been acclaimed for the training and development of disadvantaged and lower graded employees.

☐ FLEMMING AWARDS for 1973 were presented to 10 outstanding young Government employees at a ceremony in Washington, D.C., on June 13, 1974. Recipients of this coveted award were:

Dr. Cyril M. Pierce, Branch Chief, Metal and Ceramic Synthesis, Branch Air Force Systems Command, Department of the Air Force; Glynn S. Lunney, Manager, Apollo Spacecraft Program, National Aeronautics and Space Administration; Peter B. Hutt, Assistant Counsel, Food and Drug Division, Department of Health, Education, and Welfare; Lewis M. Muntzing, Director of Regulation, Atomic Energy Commission; Dr. Delio E. Gianturco, Senior Vice-President, Exporter Credits, Guaranties, and Insurance, Export-Import Bank.

Also, Dr. Edward C. Franklin, Principal Plant Geneticist, Forest Service, Department of Agriculture; Dr. Joel A. Snow, Deputy Assistant Director for Science and Technology, National Science Foundation; Robert A. Cornell, Deputy Director, Office of Economic Research, U.S. Tariff Commission; Dr. David G. Hummer, Chairman, Joint Institute for Laboratory Astrophysics, National Bureau of Standards, Department of Commerce; and Dr. George H. Heilmeier, Assistant Director of Defense, Research and Engineering, Department of Defense.

☐ BLUE-COLLAR STANDARDS expanded. Deadlines for bringing blue-collar jobs under Government-wide job grading standards were announced by the Civil Service Commission.

For Commission standards distributed before April 1, 1974, the employing Federal agencies must complete the conversions by October 1, 1974. For standards issued in the period from April 1 to October 1, 1974, the conversion must be completed within 6 months of the date that Commission standards are distributed.

The Commission emphasized that employees not converted on a timely basis stand to lose the benefit of indefinite pay retention if the application of new standards should result in downgrading. Therefore, the effect of missing a deadline would be to deprive an employee of an important benefit.

—Ed Staples

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